Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Road To Improvement

Report to the Honourable Chuck Strahl
Minister of Indian Affairs and Northern Development

"The Review of the Regulatory Systems Across the North"

Neil McCrank
Minister's Special Representative

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The opinions and views outlined in this report are those of Mr. Neil McCrank, the Minister's Special Representative for the Northern Regulatory Improvement Initiative. They are not necessarily the opinions or views of the Government of Canada.

M. Neil McCrank, Q.C., P.Eng.
1415 Shelbourne Street S.W.
Calgary, Alberta T3C 2L1

May 20, 2008

The Honourable Chuck Strahl
Minister of Indian Affairs and Northern Development
10 Wellington Street
Gatineau, Quebec
Canada K1A 0H4

Dear Minister Strahl:

I am pleased to present my report, "Road to Improvement", which captures my recommendations as your Special Representative for the Northern Regulatory Improvement Initiative.

The report contains my judgement on the status of the non-renewable resource regulatory systems in Northern Canada, with a focus on the Northwest Territories, including recommendations that if implemented will provide for improved regulatory systems.

There is a need for a restructuring of the regulatory system in the NWT, to address the issues of complexity and capacity. Two (2) options and recommendations for restructuring are outlined, which would simplify and improve the effectiveness of the system.

There are also twenty-two (22) recommendations which will bring about improvements that will complement your overall Northern Regulatory Improvement Initiative.

Thank you for this opportunity to participate in the future of a unique part of the world – northern Canada.

Yours truly,

Neil McCrank

Executive Summary

The Cabinet Directive on Streamlining Regulation was issued on April 1, 2007. It states, as follows:

In response to criticisms of the northern regulatory regimes, in particular that of the Northwest Territories, and to calls for change, Indian and Northern Affairs Canada (INAC) developed the Northern Regulatory Improvement Initiative. The Northern Regulatory Improvement Initiative has a two-fold approach, focussing on both concrete, operational-level improvements to areas of federal responsibility, while building a longer-term regulatory improvement agenda. The longer-term approach included a detailed examination of the current regulatory systems for non-renewable resources in Northern Canada and a process to make improvements.

This report is in response to the Cabinet Directive and the Northern Regulatory Improvement Initiative.

It is timely that this review should occur as there is an increased focus of attention on Northern Canada, its people and resources. It has become evident that there are significant renewable and non-renewable resources in northern Canada (North of 60). It is also very clear that the people in the North want and deserve to have the ability to co-manage the development of these resources with government.

All interested parties have committed to the orderly and responsible management of these resources.

The regulatory system(s) in the North were developed to ensure this orderly and responsible management. They were created from the settlement of the comprehensive land claim agreements in the Yukon, Northwest Territories and Nunavut. Many regulatory bodies in the Northwest Territories have been established based on these agreements, as has the *Mackenzie Valley Resource Management Act*.

Almost all regulatory bodies are at some point the subject of criticism. After all, the recommendations and decisions they make are not always popular with all parties. These criticisms are usually addressed by a better understanding of the issues or improvements to the process and system. The northern regulatory systems are no exception to this rule.

In the North, there are process and system improvements that can be made to address much of this kind of criticism. Twenty two (22) such recommendations for improvement are made in this report.

However, some of the concerns call into question the very structure of the regulatory system.

The complexity and the capacity of the regulatory system in the Northwest Territories was examined to determine if these issues could be addressed in the absence of a fundamental restructuring, which ultimately did not prove possible. This report recommends two (2) options to restructure that basically amalgamate the land use permitting and water licensing functions under a single board for the Mackenzie Valley. This would address the complexity and capacity issues by making more efficient use of expenditures and administrative resources, and would achieve more understandable and consistent practices.

If these recommendations on restructuring and improvements are implemented, the regulatory systems in the North will be able to ensure orderly and responsible development of its resources.

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Road To Improvement

I. Introduction

On November 7, 2007, the Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development, announced my appointment as the Minister's Special Representative.

In making this announcement, the Minister made this statement:

> (Appendix B – News Release, November 7, 2007)

The purpose of this review is not to promote or discourage resource development – that decision will be made by the governing authorities and the northern residents who are impacted by development.

Rather, this review is to determine if the regulatory systems can be improved so that if a decision is made to allow resource development, the development takes place in an orderly and responsible manner.

II. Background – History

This review was commissioned to attempt to address issues that have been raised about the regulatory regimes across the North, but in particular that of the Northwest Territories.

Some of these issues have been the subject of earlier reviews, studies and reports (Appendix C).

Many recommendations have been made as a result and are in various stages of implementation (Appendix D).

More recently there have been concerns expressed privately and publicly about the complexity of the regulatory regime and its impact on investment in the North.

This review was to include all three territories, Yukon, the Northwest Territories and Nunavut, with a focus on the Northwest Territories. It was recognized at the outset that the task of examining the entire North in detail was too optimistic but that there might be some common themes that would emerge from a cursory review of Yukon and Nunavut and a detailed examination of the Northwest Territories.

The Inuvialuit Settlement Region (ISR) has its own regulatory system that is quite separate from the remainder of the Northwest Territories and not included in the legislative and regulatory framework of the *Mackenzie Valley Resource Management Act* (MVRMA).

This review also includes an examination of the common themes across the ISR, but the focus is on the regulatory system covered by the MVRMA.

Much of the current regulatory system has developed from the settlement of comprehensive land claim agreements with the Aboriginal groups. These comprehensive land claim agreements set in place a framework for non-renewable resource development regulation within the settlement areas, amongst numerous other objectives.

This regulatory framework is based on a concept of co-management of the resources by the federal government, the Government of the Northwest Territories and Aboriginal governments.

The basic philosophy underlying the framework is that those associated with the land, which is to be impacted by proposals for development, should have significant input into the decision-making respecting that proposed development.

The consequence of the regional implementation of this framework is that more regulatory powers are now exercised by more bodies in more areas than ever before. Across the North, the previous jurisdiction of INAC and two water boards (for Northwest Territories and present

day Nunavut and for the Yukon) have been replaced and supplemented by 20 plus co-management bodies; each with their own membership, staff and advisors. The largest number of these Boards is found in the Northwest Territories.

The current list of regulatory bodies may be increased if and when there are further agreements settled with the Dehcho First Nations, Akaitcho Dene First Nations, and the Northwest Territory Métis Nation.

The various boards, committees, commissions and tribunals have been established as institutions of public government with a multitude of different roles:

a) settle third party access / compensation disputes
b) plan and determine conformity
c) assess, recommend and offer advice
d) regulate through permitting and licensing

A more detailed description of the current regulatory scheme is attached as Appendix E.

In the North, the philosophy is based on significant involvement of the people who live there. An example is the provisions of the *Mackenzie Valley Resource Management Act* (MVRMA), which enables residents of the Mackenzie Valley to participate in the management of its resources.

The MVRMA makes it abundantly clear that residents and communities in the Northwest Territories, particularly Aboriginal people, play a pivotal role in the regulatory system established under the legislation. The principal goals and objectives of the Act include:

a) enabling residents of the Mackenzie Valley to participate in the management of its resources (Section 9.1);
b) ensuring that the concerns of Aboriginal people and the general public are taken into account in the environmental impact assessment process (Section 114(c));
c) protecting the social, cultural and economic well-being of residents and communities in the Mackenzie Valley (Section 115(b)); and
d) recognizing the importance of conservation to the well-being and way of life of the Aboriginal peoples who use an area of the Mackenzie Valley (Section 115 (c)).

III. Process For Review

A number of individuals, groups and organizations were consulted (Appendix F). The list includes Aboriginal organizations, land claim signatories, regulatory bodies, government departments (both territorial and federal), municipal governments, industry (both individual companies and associations), environmental organizations, politicians and interested individuals.

The total number of days of meetings was 55, with numerous days occupied travelling. Meetings were held in Yellowknife, Inuvik, Norman Wells, Fort Smith, Whitehorse, Iqaluit, Winnipeg, Ottawa, Vancouver, Toronto, Edmonton and Calgary.

Oral submissions were received from all of the interested parties, and written submissions from some.

In the course of these consultations a series of questions, or a variation of them, were posed – see Appendix G.

On March 18 and 19, 2008, in Yellowknife, Northwest Territories, a roundtable discussion was held with as many stakeholders and interested parties as possible. The purpose was to explore some of the issues that had been raised during the one-on-one consultations.

The discussion was genuine and rich in ideas. A report of this roundtable is attached as Appendix H.

IV. A Model Regulatory System

In order to make recommendations to improve the current regulatory systems (that regulate non-renewable resources – i.e. minerals, oil and gas, etc.), it is first necessary to list the objectives of an effective, efficient and fair regulatory system.

The following is a list of the objectives of a model regulatory system. This list is not meant to be exhaustive and it by no means suggests that all regulatory bodies achieve all of these, all the time. But it is meant to act as a foundation to recommend improvements to the current system in the North, particularly the Northwest Territories.

Objectives of a Model Regulatory System

1. **Understandable**
   The regulatory system must be clear and understood by all participants:
   a) the regulatory bodies
   b) the proponents of development
   c) interested interveners, and
   d) the public at large

2. **Neutral**
   The regulatory bodies must remain neutral with respect to development. They should be ambivalent as to whether or not development occurs, but if it occurs, their role is to ensure that it is orderly development in the public interest.

3. **Clear Mandate**
   The regulatory bodies must have a clear **mandate** from their originating documents (i.e. – legislation, regulations, and other policy direction from government) and must operate within the parameters of that mandate.

4. **Open and Transparent Process**
   The regulatory bodies must have a process that is open and transparent.

5. **Fair Process**
   The regulatory bodies must have a process that is fair and respects the rules of natural justice.

6. **Timelines**
   The regulatory bodies must make decisions in a timely manner.

7. **Consistent and Predictable**
   The regulatory bodies must make decisions that are consistent and predictable when presented with identical facts.

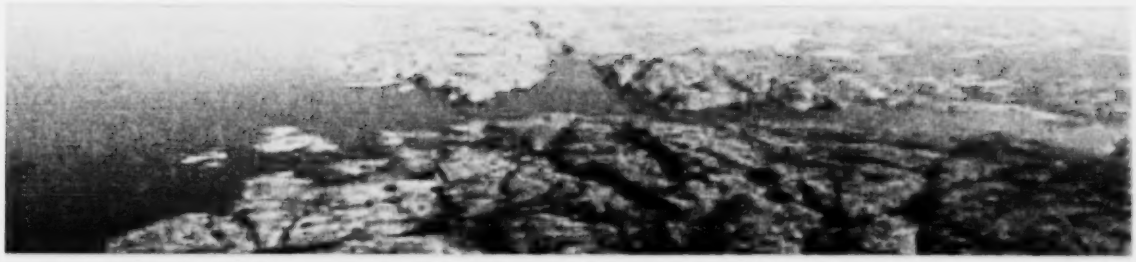
   This does not mean that the decisions or approaches **cannot** be changed, but rather any change in direction should be clearly identified as such for future information to all parties.

8. **Accountable**
   Regulatory bodies need to be accountable for their decision making processes. This means being accountable to their originating documents which are derived from government. Governance principles apply between the regulatory body and the government, while honouring the principles of quasi-judicial independence. These governance principles require established lines of authority, responsibility and accountability.

9. **Capacity**
   Regulatory bodies must have the **capacity** to fulfill their roles. Capacity means having adequate funding to ensure a certain level of education and training for the regulatory body to perform its duties. This must embrace the concept of proper orientation, continuing education and upgrading of skills.

10. **Coordinated**
    Regulatory bodies must coordinate their actions, collectively, to avoid duplication and to ensure timely processes.

11. **Establish Rules**
    The regulatory bodies must set clear and consistent rules for regulated parties, and ensure that these rules are enforced.



V. Realities

Before I compare the current regulatory regimes against the model, it is necessary to point out some realities that have an effect on this issue.

1. A number of asserted land claims have **not** been settled in the Northwest Territories, although they are currently in negotiations. While four (4) have been settled (Inuvialuit Final Agreement, Gwich'in Comprehensive Land Claim Agreement, Sahtu Dene and Métis Comprehensive Land Claim Agreement, T'licho Land Claims and Self-Government Agreement), there are three (3) outstanding (Dehcho First Nations, Akaitcho Dene First Nations, and Northwest Territory Métis Nation).

In addition, in the Yukon there are three (3) First Nations, of fourteen (14), who have not completed comprehensive land claim agreements (White River First Nation, Ross River Dene Council and Liard First Nation).

The fact that a large part of the Northwest Territories is still awaiting land claim agreements inevitably leads to complexity and uncertainty in the regulatory regime.

In Nunavut, and significant portions of the Yukon, this issue has been resolved by completion of land claim agreements for their entire areas. The Yukon is also simplified by the Umbrella Final Agreement, which all First Nations were signatories to, making the overall framework of the regulatory regime much simpler, as it does not differ from region to region.

2. **Devolution of Land and Resource Management Responsibilities in the North**
The Government of Yukon took over responsibility, from Indian and Northern Affairs Canada, for land and resource management in 2003.

The federal government has an objective of devolving the land and resource management responsibilities in both the Northwest Territories and Nunavut, but this has not been achieved to date.

The ongoing, but yet to be completed, devolution of these responsibilities adds another layer of complexity to the regulatory regime.

VI. Assessment Of Current System

The process of consulting with all of the stakeholders over the last six (6) months has provided many impressions about the current regulatory regime in the North.

In order to provide meaningful recommendations it is necessary for one to make informed judgements from these discussions. This is not a precise science but should provide guidance.

All of the regulatory bodies in the North are making a genuine and serious attempt to perform their role in the public interest.

However, there are limitations, structural or otherwise, that prevent this regulatory system from measuring up to the model described earlier.

This **critical** assessment is focused on the Northwest Territories and, in particular, the area covered by the *Mackenzie Valley Resource Management Act*. There will be separate sections that comment on the Yukon and Nunavut (Sections IX and X).

A common theme seemed to suggest that once the current regulatory process is engaged, it achieves the objectives of being open, transparent and fair. All those interviewed were complimentary and supportive of the individuals who devoted their time and energy to these principles.

Therefore, in my opinion, the current system meets objectives 4 and 5.

It is my observation that many of the model objectives are not met by the current regime on a **consistent** basis.

It is also my opinion that these shortcomings can be addressed within the existing framework by implementing the recommendations that will be included in Section VIII of this report.

2. Neutral

It is not surprising that, with the number of regulatory bodies and their members, that there are some who exhibit a bias towards or against resource development. This is particularly so when members are appointed as representatives of a particular group – and the orientation and training to eliminate that bias has been inadequate.

3. Clear Mandate

Governments do not always clearly outline the mandates, in terms of the roles and responsibilities, of its agencies, boards and commissions. This is particularly so in the Northwest Territories where many new regulatory bodies were created by the settlement of comprehensive land claim agreements and these roles and responsibilities were not completely defined in the agreements, in legislation or in policy.

In some instances, there are serious allegations that the regulatory bodies are tempted to act outside of their mandates.

6. Timelines

While some of the regulatory bodies have specific timelines, which are usually met, the overall system seems to be stressed and is not able to deliver timely decisions. In other instances there does not appear to be any real attempt to set timelines.

7. Consistent and Predictable

While this objective is difficult to assess, the **perception** is that often the regulatory bodies are **not** consistent when confronted with identical facts. This leads to a belief that the system is unpredictable.

8. Accountable

While there does not appear to be a consistent theme of accountability in the overall regime, it may be that there has been no attempt by government or the regulatory boards to bring about any sense of this concept. This is closely connected to boards having clear mandates.

10. Coordinated

This objective is directed at the entire system – boards and government regulators.

Recently there has been an attempt to coordinate the boards through the NWT Board Forum and this is to be commended and encouraged.

However, there needs to be a greater effort to coordinate with government, both federal and Northwest Territories.

There is also an absence of meaningful coordination of the government departments that have regulatory responsibilities.

11. Establish Rules

It is not surprising that many of the regulatory bodies have not established a reasonably complete set of rules and guidelines. This is something that comes with maturity.

One of the common themes from all parties was that there is an inconsistent application of the enforcement of the rules that have been established. This will lead to a general disrespect of the system.

Note: as indicated earlier, all of these deficiencies can be remedied and addressed and will be the subject of recommendations later in Section VIII.

Objectives That Cannot Be Met in the Current System (Objectives 1 and 9)

There are two (2) objectives of a model regulatory system that cannot be achieved by the current system within the structure that has been created and is currently in operation. These are as follows:

1. Understandable
9. Capacity

These objectives are connected in that the proliferation of regulatory bodies creates complexity and lack of understanding, as well as the extreme difficulty of developing the proper capacity of these bodies.

It is clearly understood that this system was created to ensure that the residents of the North have a significant say as to whether there should be development and where.

However, this concept has led to unintended consequences, most particularly a regulatory system that is not able to consistently perform its role in a responsible, consistent manner.

The complexity of the system speaks for itself. The number of boards and regulatory authorities are a result of the comprehensive land claim agreements. The system was created to meet multiple objectives, but, in doing so a very complex regulatory system, that is not very well understood, was developed.

The capacity objective (#9) has as its goal to provide regulatory bodies with sufficient skill and expertise to fulfill their mandates. Within this is included the concept of introductory education and training, but also the need for continuing education and training to remain current in a very technically challenging environment. These requirements apply to both appointed board members and the expert staff.

One has to admire the commitment and dedication of all the board members and staff of these many regulatory bodies. However, in my opinion, it is not possible to expect that this capacity issue will improve as more comprehensive land claim agreements are settled and, hence, more regulatory bodies are created. Increasing activity levels for resource development will also exacerbate the issue.

Therefore, in my opinion, the objectives of having an understandable regulatory system with sufficient capacity will continue to be compromised in the current regulatory system.

A table of assessment outlining the current regulatory system is attached as Appendix I.

VII. Restructuring Proposal

In order to meet all of the objectives of a model regulatory system, it will be necessary in the Mackenzie Valley to:

1. restructure; and
2. accept and implement the recommendations made in Section VIII of this report.

Restructuring

This Section will outline some options on restructuring. It should be made very clear that this is not an attempt to diminish or reduce the influence that Aboriginal people have on resource management in the North. Aboriginal people worked long and hard to be recognized as having rights that would allow for this influence. The successful comprehensive land claim agreements are evidence of that reality.

Rather, this is meant as an attempt to find a practical way to allow for this influence, while at the same time enabling responsible resource development through an effective regulatory system.

There are two (2) options for consideration.

Any fundamental restructuring would involve five (5) components:

1. *The completion of the Land Use Plans in the Mackenzie Valley.*
2. *The designation of the Mackenzie Valley Land and Water Board (MVLWB) as the* ***only*** *Land and Water Board in the Valley.*
3. *Sufficient funding of the Mackenzie Valley Land and Water Board (MVLWB) to allow it to carry out its responsibilities.*
4. *A recognition by the federal government (INAC) that the Mackenzie Valley Land and Water Board (MVLWB) will become the final decision maker on those matters within its jurisdiction.*
5. *A recognition by the federal government (INAC) that the Mackenzie Valley Environmental Impact Review Board (MVEIRB) will become the final recommending body on those matters within its jurisdiction.*

Any fundamental restructuring would require the agreement of all of the parties to the comprehensive land claim agreements.

The comprehensive land claim agreements are constitutionally protected and hence cannot be amended without all affected parties being in agreement with the amendment.

1) *The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.*
2) *In this Act; "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.*
3) *For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claim agreements or may be so acquired.*

> *The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.*

Therefore Section 35 protection cannot be legislated away.

The approach of having co-management resource development regulating bodies ensures local input into the proposed development. This input is important and should be preserved.

In trying to accomplish this goal, a regulatory structure has been created with too many regulatory bodies that do not (and will not) have the capacity to perform their duties.

This complex structure is the result of the interpretation of the comprehensive land claim agreements and the MVRMA. While the goal is laudable, the execution of the processes is such as to hinder, rather than enable, resource development.

However, this goal, at ensuring local input, can be achieved in another manner with the completion of the Land Use Plans across the Northwest Territories.

Land Use Plans

The Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Métis Comprehensive Land Claim Agreement call for Land Use Planning in the Gwich'in and Sahtu Settlement Regions, respectively.

To date, only the Gwich'in Settlement Area within the Mackenzie Valley has an approved Land Use Plan.

The T'licho Land Claims and Self-Government Agreement does not call for a Land Use Plan. However, one may be developed – see S.22.5.

The Dehcho Interim Measures Agreement calls for a Land Use Plan, which is currently under development.

The Akaitcho and NWT Métis Nation Interim Measures Agreements do not have such calls for Land Use Plans.

The Regional Land Use Planning Boards, established under the *Mackenzie Valley Resource Management Act*, are to develop Land Use Plans for consideration by the federal government and the GNWT, that provide for the conservation, development and use of land, water and other resources in a settlement area. Any regulatory authority issuing an authorization for the use of lands or waters, or the deposit of wastes, is legally bound to abide by the approved Land Use Plans.

A priority should be set by all affected parties to complete outstanding Land Use Plans and consideration should be given for the development of Land Use Plans in all other areas of the Mackenzie Valley.

These Land Use Plans will provide local input into a framework for resource management.

Once the Land Use Plans have been approved, the MVLWB should be established as the only Land and Water Board in the Valley. This would include the elimination of the regional panels.

The MVLWB should be funded to the level that allows it to have the capacity at the Board and staff level to perform the duties of a Land and Water Board for the entire Mackenzie Valley.

The consequence of this restructuring would be that the local Land and Water Boards (Gwich'in, Sahtu, Wek'eezhii) would turn over their obligations and duties to the MVLWB and be discontinued. This would require amendments to the comprehensive land claim agreements and to the MVRMA.

- Gwich'in Comprehensive Land Claim Agreement – S.24.4.1
- Sahtu Dene and Métis Comprehensive Land Claim Agreement – S.25.4.1
- T'licho Land Claims and Self-Government Agreement – S.22.3.2
  - and other parts of the Agreements
- *Mackenzie Valley Resource Management Act* – S.102
  - and other parts of the *Mackenzie Valley Resource Management Act*

It would be anticipated that the current funding that is provided to the discontinued Land and Water Boards would be transferred to the MVLWB to ensure that the capacity and expertise necessary is housed in one single regulatory authority.

In the context of the MVRMA, the federal government, through INAC, has continued to be the final decision maker on recommendations from the environmental assessments and environmental impact reviews. In addition, the INAC Minister continues to have a role in approving Type A water licenses. While this makes sense, when the regulating bodies are maturing in the North, it leaves the perception that these bodies continue to need coaching.

If confidence is shown in a restructured regulatory system, then independent bodies should make decisions that reflect the true will of the North.

It is recognized that the federal government has overall responsibility for land and resource management until devolution of these responsibilities to the Government of the Northwest Territories is completed, but that this responsibility can be exercised through the approval of Land Use Plans and the board appointment process. In addition, there will always need to be a national interest provision which the federal government could invoke, when necessary.

Option 1 will require a significant paradigm shift in thinking for all involved, and the transition may take some time.

However, it would provide:

(a) local input through the completion of the Land Use Plans
(b) local input through membership in the two (2) Mackenzie Valley-wide expert Boards (MVLWB and MVEIRB)
(c) greater northern control through final decision making at the Board level
(d) addressing capacity issues for the two (2) Mackenzie Valley-wide expert Boards
(e) less complexity

At the roundtable discussion in Yellowknife, on March 17-18, 2008, there were comments that:

These comments are very true, but the ultimate goal should be to reach this objective.

This restructuring recommendation would involve the same components as Option 1, but would not include discontinuing the regional Land and Water Boards (i.e. Gwich'in, Sahtu or Wek'eezhii Boards).

However, to accomplish the objective of ensuring the proper capacity for the regulatory system, it is recommended that the regional boards be designated as administrative boards only, with no quasi-judicial responsibilities.

The Mackenzie Valley Land and Water Board (MVLWB) would be restructured to:

(a) provide a quasi-judicial function for disputes that arise at the regional board level; and
(b) provide an appeal mechanism for decisions made at the regional board level.

This restructuring would require amendments to the *Mackenzie Valley Resource Management Act* (MVRMA), but **may** not require any amendments to the comprehensive land claim agreements.

The other components of Option 1:

1) completion of Land Use Plans
2) support funding for the MVLWB
3) MVLWB becoming the final decision maker within its jurisdiction
4) MVEIRB becoming the final recommender within its jurisdiction

would need to be implemented to ensure local input into the decision making of the co-management resource development regulatory bodies.

The main disadvantages to this option is that there will continue to be a complexity that would be eliminated in Option 1, and there will continue to be an expenditure of funds at the regional board level, that would not be directed to the more central expert boards.

VIII. Recommendations For Improvements

During the course of the engagement, various issues were discussed in the context of recommendations that would improve the regulatory system across the North.

Almost all of these recommendations were directed to the Mackenzie Valley, although I will try to outline common themes that crossed into the ISR, Nunavut and the Yukon.

Many of these recommendations have been made in the past, in reports and reviews noted in Appendix C and D.

The discussions and recommendations are categorized as follows:

A. Policy and Management Frameworks
B. Process Improvements
C. Legislative and Regulatory Amendments
D. Federal Government Role

A. Policy and Management Frameworks

i) Land Use Plans

The value of Land Use Plans was reviewed as part of the Restructuring Section of this report (Section VII).

This issue was also the subject of an extensive review and recommendation in the 2005 Northwest Territories Environmental Audit, noted in Appendix D.

Today, while the ISR and the Gwich'in Settlement Area have developed Land Use Plans that are playing an important role in identifying and protecting areas of environmental importance, progress in other parts of the NWT and Nunavut has lagged behind.

Recommendation #7
A priority should be given to completing the Land Use Plans in all areas, and obtaining their approval from the federal government.

ii) Consultation

Community and Aboriginal consultation pressures are a significant burden on all parties. Defining principles, steps and standards could streamline the processes and lead to substantially improved relationships.

There is a need to reduce the workload on communities, industry and government associated with Aboriginal consultation in regulatory procedures.

There needs to be an engagement of governments and Aboriginal leaders in a real conversation about making improvements to the nature, timing and amount of consultation required, relative to various activities on the land.

Recommendation #2
The federal government should give the highest priority to developing and implementing a policy that will clarify its own role, the role of proponents and the role of the regulatory boards, in relation to responding to the requirement for Aboriginal consultation and accommodation.

iii) Impact Benefit Agreements

Impact Benefit Agreements have developed in an unregulated environment. These types of arrangements may very well provide a useful vehicle in the process of resource development.

However, there is no regulation of these agreements that would establish standards in keeping with the type and scale of the activity.

Recommendation #3
The federal government should give priority to developing an official policy on the purpose, scope and nature of Impact Benefit Agreements in the North.

iv) Environmental Agreements

Environmental agreements have been developed to cover areas where there is no legislation or regulation to provide for environmental protection (i.e. air quality).

While these agreements and the resulting independent monitoring agencies have done a very commendable job in ensuring there is protection in areas not covered by legislation, it is done on a one-off basis. With this experience, it is now time for these agreements to have some structure and legislative foundation.

Recommendation #4
The federal government should identify the gaps in existing legislation and regulations that should be filled in order to protect all elements of the natural environment, to the extent required by the principles of sustainable development, and give priority to the development of the necessary statutes and regulations in order to progressively eliminate the need for ad hoc environmental agreements on a project-by-project basis.

v) NWT Cumulative Impact Monitoring Program (CIMP)

Monitoring of cumulative impacts is a statutory requirement of the *Mackenzie Valley Resource Management Act*, and the Sahtu, Gwich'in and T'licho comprehensive land claim agreements. The MVRMA requires that the responsible authority (currently INAC) ensure the collection and analysis of data "for the purpose of monitoring the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste in the Mackenzie Valley."

The NWT CIMP is designed to meet that requirement by supporting community-based monitoring to fill gaps in current monitoring activities, providing coordinated reporting on the state of the NWT environment, and promoting regional and community capacity-building. These activities will incorporate both scientific and traditional knowledge and will consider both the human and biophysical environments.

The NWT CIMP uses a community-based, partnership approach to its design and implementation. A Working Group reviews and ranks proposals for funding, and decides on successful recipients according to CIMP application criteria. Since its inception, the NWT CIMP has provided funding towards approximately 100 projects for monitoring and research as well as capacity building and training based on internal allocation from the NT Region. This funding has largely been ad hoc, and no long term or commitment to sustained funding has been made.

Recommendation #5
The federal government should commit to the NWT Cumulative Impact Monitoring Program (CIMP) and commit funds for that purpose.

vi) Security Deposits

The security deposit requirements for existing mining operations demonstrates the need for a more comprehensive, cohesive approach that will ensure adequate funds for reclamation and restoration but not impose an unreasonable burden on the operation.

Recommendation #6
The federal government should initiate a review of its current practices for requiring financial security for mining operations in the North, with a view to establishing these requirements in a more orderly fashion and to eliminate duplication.

vii) Capacity

The capacity issues in the North were referred to in earlier sections of this report. It should be noted that capacity is not just an issue in the North but indeed is an issue in all of Canada and many parts of the world.

However, these issues may be exacerbated in the North because it has a relatively small population and leadership is already heavily committed to dealing with a multitude of challenges.

Excessive pressures put a burden on the people, communities and institutions of the North, and draw people and resources away from economic, societal and cultural endeavours.

Lack of capacity may become an issue in the following ways:

(a) Limited financial, institutional and human resource capacity of potentially impacted aboriginal organizations may hinder the ability to participate in the processing of development applications, and to document and interpret traditional knowledge that can, in turn, assist Boards in resource management decision making.

This can be remedied to some extent by simplifying the regulatory system, as noted in the restructuring section, thereby allowing Aboriginal leaders who serve on regulatory boards to provide much needed leadership and assistance to the residents of the potentially impacted areas.

(b) Lack of adequately qualified people to serve as board members of the regulatory bodies.

This issue can be addressed by a more deliberate program of orientation, training and continuing education for all board members.

Recommendation #7
The federal government should ensure that each regulatory body has a structured plan for: a) orientation, b) training and c) continuing education for each new member that is appointed.

viii) Free Entry System

There were serious concerns raised by many Aboriginal groups about the free entry system that allows for activity in some lands without any type of notice, permission or warning to the local residents.

This is an issue that warrants a complete review, with all stakeholders providing input.

Recommendation #8
The federal government should consult with all interested stakeholders and develop a policy on the free entry system.

i) Performance Measures – Timelines

Much discussion surrounded the length of time required to move applications through the regulatory process.

From the proponent's point of view, this process commences when consultation begins and ends when the application is approved or registered. This often involves steps or processes outside of the control of the formal regulatory bodies that often have very specific timelines for this involvement.

Examples were cited when the entire process took several years before a decision was rendered.

There is obviously a need for a more efficient process. Some of these concerns can be addressed through better coordination of all parties, including the regulatory bodies and the federal government departments which will be addressed later under the recommendations in the section concerning the role of the federal government.

However, there should also be performance measures relating to the processing of applications – from the time an application is reviewed until a final decision is made to approve or reject the application.

Recommendation #9
The federal government and the appropriate regulatory authorities should develop performance measures that result in effective timelines from the receipt of the application to disposition. This may involve different timelines, depending on the scope and complexity of the application.

ii) Water Quality Standards and Effluent Standards

The *Northwest Territories Waters Act* provides as follows with respect to water quality guidelines and effluent standards:

33. (1) The Governor in Council may make regulations

(h) prescribing water quality standards for any waters;

(i) prescribing effluent standards in relation to any waters.

14. (4) Where an application for a licence is made, the Board shall not issue a licence unless the applicant satisfies the Board that

(c) any waste that would be produced by the appurtenant undertaking will be treated and disposed of in a manner that is appropriate for the maintenance of

(i) water quality standards prescribed by regulation made under paragraph 33(1)(h) or, in the absence of such regulations, such water quality standards as the Board considers acceptable, and

(ii) effluent standards prescribed by regulations made under paragraph 33(1)(i) or, in the absence of such regulations, such effluent standards as the Board considers acceptable.

Since the federal government has not yet prescribed water quality standards or effluent standards applicable under the *Northwest Territories Waters Act*, there is no consistency between water licenses, adding to uncertainty.

RECOMMENDATION #10
The federal government should, as a priority, in consultation with the Boards under the *Mackenzie Valley Resource Management Act*, develop standards for water and effluent and the Minister should direct the boards to use those standards.

iii) Triggers for Environmental Assessment

One of the major concerns expressed by many stakeholders was that the environmental review process is not serving the Northwest Territories well. The debate centered on the issue of when an environmental review should go beyond the preliminary screening to a full environmental assessment and, beyond that, an environmental impact review.

In some instances cited, the level of review seemed to be beyond the scale and nature of the activity contemplated.

There do not seem to be statutory definitions or thresholds that could guide the regulatory body (Mackenzie Valley Environmental Impact Review Board) in its decision making on this question. The Minister could remedy this by making amendments to the MVRMA (explained further under recommendations regarding the role of the federal government – Section VIII, D, iii).

Recommendation #11
The federal government should address the issue of the Environmental Review process and consider providing legislative amendments to the MVRMA that set out the criteria that triggers more extensive review levels.

iv) Enforcement

One of the objectives of an effective regulator is to establish rules or conditions and that it ensure that these rules or conditions are implemented and complied with. In some instances, there will be a need for the regulatory authority to take enforcement action to ensure its credibility.

In the NWT the responsibility for implementation and enforcement rests with the Minister of INAC, the other Responsible Ministers and other governments.

There appears to be a disconnect between some of the regulatory bodies and the federal government on this issue. The suggestion was made that not all of the measures that are recommended by the regulatory bodies and accepted by the Minister are implemented and not all are enforced at an effective level.

Recommendation #12
The federal government and the appropriate regulatory bodies should develop a Memorandum of Understanding (MOU) concerning the issue of implementation and enforcement of recommended and accepted conditions.

i) *Mackenzie Valley Resource Management Act*

The MVRMA has been in effect for about a decade.

The purpose of this legislation was articulated in S.9.1.

> *S.9.1. The purpose of the establishment of boards by this Act is to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians.*

It is clear from the recommendations on restructuring that, if they are accepted, there would be a need for considerable revamping of the MVRMA.

Part 6 of the MVRMA, in particular S. 148, requires a review of the effectiveness of this legislation periodically:

> *S.148(1) The Federal Minister shall have an environmental audit conducted at least once every five years by a person that is independent.*

The first Environmental Audit was completed in December 2005. It made a number of recommendations, which are in various stages of implementation as noted earlier.

These audits take a significant period of time to conduct.

In view of the recommendations in this report and the time that has passed since the 2005 report, it may be timely to begin the second environmental audit.

A second option would be for the Minister to order a review of the MVRMA specifically, similar to the requirements under other legislation, such as S.72 of the *Canada Environmental Assessment Act* (CEAA), which reads as follows:

> *72. (1) "Five years after the coming into force of this section, a comprehensive review of the provisions and operation of this Act shall be undertaken by the Minister."*

Recommendation #13
The Minister of INAC should commission a second environmental audit of the Northwest Territories in accordance with S.148(1) of the MVRMA and / or order a specific review of the MVRMA.

ii) Surface Rights Legislation

Legally, a developer cannot be denied access to crown-disposed mineral rights, including oil and gas rights. However, in practice, protracted or failed negotiations to reach access agreements have delayed or indefinitely suspended some proposed oil and gas activities.

The federal government should develop surface rights legislation, as provided for in the Gwich'in Comprehensive Land Claim Agreement and Sahtu Dene and Métis Comprehensive Land Claim Agreement.

In the absence of surface rights legislation, the Gwich'in and Sahtu comprehensive land claim agreements provide that access disputes will be determined by arbitration, except where such dispute resolution is provided for in legislation. The Northwest Territories and Nunavut Mining Regulations are the only legislation that contains such provisions. The *Canada Oil and Gas Operations Act* (COGOA) provides for a process, but no such provisions have been enacted.

Recommendation #14
The federal government should consider some legislative solution to resolve the current difficulty of surface access to land.

i) Appointments

There were a number of concerns expressed about the timing of appointments. At times, some of the regulatory boards were concerned that they would be left without sufficient members to form a quorum for decision making.

There seemed to be satisfaction with the actual appointments.

Recommendation #15
The Office of the Minister of INAC should establish a process that would anticipate board appointments and ensure that the appointments are timely.

ii) Minister's Directives

There is provision within the MVRMA for the Minister to give direction on policy matters to the regulatory boards:

> *S.83(1) The Federal Minister may, after consultation with a board, give written policy directives binding on the board with respect to the exercise of any of its functions under this Part (Part 3 - Land and Water Regulation).*
>
> *S.109 The Federal Minister may exercise the same powers and shall perform the same duties in relation the Board* (MVLWB), *and its regional panels as are conferred or imposed on the Federal Minister in relation to a board* (regional) *established by Part 3.*

When there is lack of clarity for boards or the regulatory process relating to the Board, there is a desire to receive some direction from the Minister.

Recommendation #16
The federal Minister should clarify some issues involving the regulatory boards or the regulatory process by exercising his/her authority under the MVRMA.

iii) Ministerial Review Under S.130 of the MVRMA

Under S.130 of the MVRMA, the federal Minister has certain responsibilities with regard to reports received from the Mackenzie Valley Environmental Impact Review Board.

These responsibilities include reviewing the report with other responsible ministers, deciding whether to order an environmental impact review, adopting the recommendation, referring it back to the Mackenzie Valley Environmental Impact Review Board for further consideration and many others.

The main concerns about the process are as follows:

a) no transparent process by which the Responsible Ministers reach a decision
b) no timelines
c) no requirement for written recommendations to assist parties in the future

This can be addressed by the development of a protocol to address these concerns.

Recommendation #17
The federal Minister (INAC) should develop a protocol on the review and disposition relating to S.130 (MVRMA) decisions.

iv) Coordination of Federal Responsibilities

The Minister asked for some recommendations on whether an office, similar to the recently announced initiative of Natural Resources Canada, the Major Projects Management Office (MPMO), would be effective North of 60.

The MPMO will, South of 60, provide a single point of entry into the federal regulatory process for all stakeholders, in order to provide an overview of the entire federal regulatory system for major resource projects, and will provide guidance and advice to project proponents and others on how to navigate through the system. It will work collaboratively with other parties to identify areas where the consistency, efficiency and effectiveness of the federal regulatory process for major resource projects can be improved, both in the short and longer term.

There is a need North of 60 for coordination of all of the working parties - the federal government, the GNWT and the regulatory bodies.

The recent initiative of the NWT Board Forum, which is an attempt to coordinate all of the NWT regulatory boards, is a step in the right direction. The invitation to other regulatory bodies to join the NWT Board Forum is another good attempt at coordinating the Northwest Territories.

However, there is a need for a more formal office with coordinating responsibilities. A made-in-the-North MPMO could perform this function. It would need to go beyond the role of the southern model to liaise with the regulatory boards as well as the federal departments. It should also be designated as an organization that coordinates all projects – major or minor.

Where it is located is important and the North has a relationship with INAC that suggests it should probably be with INAC.

RECOMMENDATION #10

The federal government should explore a made-in-the-North equivalent of the MPMO that would be a single point of entry and assist in coordinating federal departments and the GNWT, as well as liaise with the regulatory bodies for all projects, major and minor.

IX. Nunavut

The regulatory regime of Nunavut was reviewed to determine if it shared common themes with the Northwest Territories and Yukon. This was not a detailed examination.

The one feature that is remarkably different from the NWT is the simplicity of the system in Nunavut. One comprehensive land claim agreement covers the whole territory. As a result, there are fewer regulatory bodies:

i) The Nunavut Water Board (legislation in force - 2002)
ii) The Nunavut Surface Rights Tribunal (legislation in force - 2002)
iii) The Nunavut Impact Review Board (legislation in development)
iv) The Nunavut Planning Commission (legislation in development)

Recommendation #1

The federal government should, with the collaboration of the Government of Nunavut, Nunavut Tunngavik Incorporated, the Nunavut Impact Review Board and the Nunavut Planning Commission, complete the Nunavut Land Use Planning and Impact Assessment Act.

Discussions are ongoing between the federal government, Government of Nunavut and Nunavut Tunngavik Incorporated to move towards a successful transfer of responsibilities for land and resource management in Nunavut.

Even with the simplicity of the Nunavut regulatory regime, the territory does suffer some difficulties. As well, the territory does share some common themes with the Northwest Territories and the Yukon.

1. **Land Use Planning**
   As noted earlier, land use planning is the key to early involvement by the people of Nunavut in the management of the resources of the territory. The Nunavut Planning Commission has proposed that it would complete plans for every region of the territory within four (4) years (including obtaining the approval of the federal government). This would require additional funding.

Recommendation #2
The federal government should make completing Land Use Plans for all of Nunavut a priority.

2. **Environmental Assessment Duplication**
   There continues to be a duplication of efforts by the Canadian Environmental Assessment Agency and the Nunavut Impact Review Board.

Recommendation #3
The duplication of efforts by the Nunavut Impact Review Board and the Canadian Environmental Assessment Agency should be addressed.

3. **Capacity**
   Capacity seems to be a continuing challenge in Nunavut as well.

4. **Consultation**
   Consultation, or the lack of a definition for consultation, is an issue in Nunavut as well.

5. **Timelines**
   There were concerns expressed about the timelines of the regulatory process, at least for very large projects. There may be a need to streamline some of the regulatory functions.

6. **Northwest Passage**
   The potential for resource development in much of Nunavut will only be realized if there is the ability to transport the resource by water. The opening of some of the water passages to year-round shipping is an issue that may require a policy resolution by the federal and Nunavut governments.

X. Yukon

The Yukon regulatory system was also reviewed, very quickly, to determine if there were any common themes that the territory shared with the Northwest Territories and Nunavut.

A couple of features of the territory make it unique in the North:

1) The Umbrella Final Agreement with the First Nations provides for a less complex resource management environment.
2) The *Yukon Environmental and Socio-economic Assessment Act* (YESAA) and its regulatory instrument, the Yukon Environmental and Socio-economic Assessment Board (YESAB), provides some stability and predictability in the environmental assessment process. This is not to suggest that there are no issues with this Act or the regulatory system, but they can be reviewed as part of the five (5) year review of this new Act, which is just commencing.
3) Devolution of land and resource management responsibilities to the Yukon Government has been completed.

Common Themes

1. Consultation
Consultation, or the lack of a definition for consultation, is an issue in the Yukon as well.

2. Development Assessment Process
The Development Assessment Process will be reviewed as part of the five (5) year review of the *Yukon Environmental and Socio-economic Assessment Act*.

Recommendation #1

All affected parties should make it a priority to participate in the five (5) year review of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA), so as to complete the review in a timely fashion.

XI. Implementation Plan

Many stakeholders requested that this report include an implementation plan that would include an accountability framework for timelines and responsibility.

To respond to this request, it is necessary to separate the recommended restructuring in Section VII from the specific recommendations in Section VIII.

i) **Restructuring Recommendations**
Restructuring may involve amendments to the comprehensive land claim agreements and to the *Mackenzie Valley Resource Management Act*. These amendments will take some time to negotiate and process and this cannot be reliably predicted. However, there should be a serious effort made to determine whether there is an agreement to restructure by the end of 2008 and with that decision a timeline established for the restructuring.

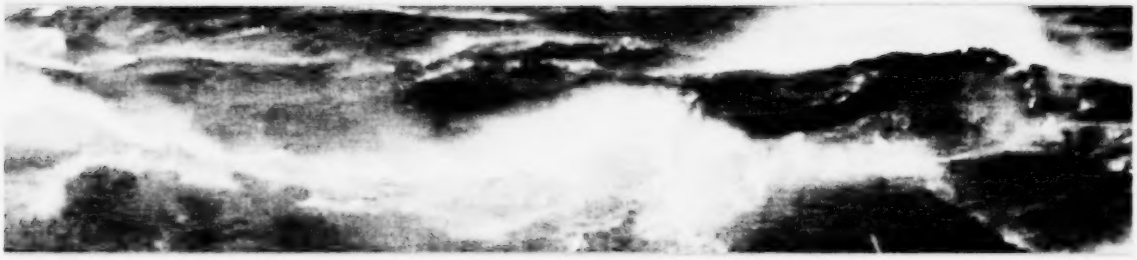
ii) **Twenty two (22) Specific Recommendations.**
Most of these recommendations have been made in earlier reports, as noted in Appendix C and D. These recommendations are at different stages of implementation.

There should be a serious effort made to determine which of the twenty two (22) recommendations should be accepted and an implementation plan with timelines established for each.

The decision to implement these recommendations should be made and communicated to all stakeholders by September 30, 2008.

It is clear that most of the responsibility for ensuring that these recommendations are acted on is with the federal government. It is also clear that they cannot make decisions and act on these recommendations without the cooperation of other stakeholders.

Therefore, since this will require a coordinated effort of all parties, the most appropriate body to assume this role is the made in the North version of the Major Projects Management Office recommended in Section VIII, D, iv, once it is established.



XII. Concluding Remarks

Northern Canada has the potential to manage its non-renewable resources in the public interest if it balances the economic and social benefits of development with the need to provide for the protection of the environment.

The people of the North want and deserve to have much influence on the decisions to develop these resources, where to develop these resources and how they are to be developed.

Key components in this process are the regulatory systems of the three territories. This report and its recommendation on restructuring and its twenty two (22) specific recommendations are an attempt to balance all of those interests while recommending a regulatory system that is effective and responsive.

From the beginning, this exercise was designed to work with the people of the North to recommend improvements to their regulatory systems.

In recommending restructuring in the Northwest Territories there has been recognition that this will only be accepted if there is a genuine effort to include the voice of the North through effective Land Use Plans, a northern Land and Water Board (MVLWB), and a northern Environmental Assessment Board (MVEIRB), that are independent and final decision makers.

It is my sincere hope that my comments and recommendations reflect the collective wisdom of all of the stakeholders that were consulted. It has been my great honour and privilege to have had the opportunity to work alongside these very passionate, dedicated and committed people North of 60.

APPENDICES

APPENDIX A
RECOMMENDATIONS

Recommendations for Restructuring

Option 1:

a) A priority should be given to completing the Land Use Plans and obtaining their approvals from the federal government.

b) The Mackenzie Valley Land and Water Board (MVLWB) should be designated as the only Land and Water Board in the Mackenzie Valley.

c) The Mackenzie Valley Land and Water Board should have sufficient funding to allow it to carry-out its responsibilities.

d) The federal government (INAC) should recognize the Mackenzie Valley Land and Water Board (MVLWB) as the final decision maker within its new, revised jurisdiction.

e) The federal government (INAC) should recognize the Mackenzie Valley Environmental Impact Review Board (MVEIRB) as the final recommender on those matters within its jurisdiction.

Recommendations for Restructuring

Option 2:

a) A priority should be given to completing the Land Use Plans and obtaining their approvals from the federal government.

b) The Mackenzie Valley Land and Water Board (MVLWB) should be designated as the only Land and Water Board with quasi-judicial responsibilities and appellant responsibilities from disputes at the Regional Land and Water Board. The Regional Land and Water Boards will be designated as administrative regulatory bodies.

c) The Mackenzie Valley Land and Water Board (MVLWB) and the Regional Boards should have sufficient funding to allow them to carry-out their responsibilities.

d) The federal government (INAC) should recognize the Mackenzie Valley Land and Water Board (MVLWB) as the final decision maker within its new, revised jurisdiction.

e) The federal government (INAC) should recognize the Mackenzie Valley Environmental Impact Review Board as the final recommender on those matters within its jurisdiction.

Specific Recommendations for Improvement

Recommendation 1 – Land Use Plans

A priority should be given to completing the Land Use Plans in all areas, and obtaining their approval from the federal government.

Recommendation 2 – Consultation

The federal government should give the highest priority to developing and implementing a policy that will clarify its own role, the role of proponents and the role of the regulatory boards, in relation to responding to the requirement for Aboriginal consultation and accommodation.

Recommendation 3 – Impact Benefit Agreements

The federal government should give priority to developing an official policy on the purpose, scope and nature of Impact Benefit Agreements in the North.

Recommendation 4 – Environmental Agreements

The federal government should identify the gaps in existing legislation and regulations that should be filled in order to protect all elements of the natural environment, to the extent required by the principles of sustainable development, and give priority to the development of the necessary statutes and regulations in order to progressively eliminate the need for *ad hoc* environmental agreements on a project-by-project basis.

Recommendation 5 – NWT Cumulative Impact Monitoring Program (CIMP)

The federal government should commit to the NWT Cumulative Impact Monitoring Program (CIMP) and commit funds for that purpose.

Recommendation 6 – Security Deposits

The federal government should initiate a review of its current practices for requiring financial security for mining operations in the North, with a view to establishing these requirements in a more orderly fashion and to eliminate duplication.

Recommendation 7 – Capacity

The federal government should ensure that each regulatory body has a structured plan for:

a) orientation,
b) training and
c) continuing education

for each new member that is appointed.

Recommendation 8 – Free Entry System

The federal government should consult with all interested stakeholders and develop a policy on the free entry system.

Recommendation 9 – Performance Measures – Timelines

The federal government and the appropriate regulatory authorities should develop performance measures that result in effective timelines from the receipt of the application to disposition.

This may involve different timelines, depending on the scope and complexity of the application.

Recommendation 10 – Water Quality Standards and Effluent Standards

The federal government should, as a priority, in consultation with the Boards under the *Mackenzie Valley Resource Management Act*, develop standards for water and effluent and the Minister should direct the boards to use those standards.

Recommendation 11 – Triggers for Environmental Assessment

The federal government should address the issue of the Environmental Review process and consider providing legislative amendments to the MVRMA that set out the criteria that triggers more extensive review levels.

Recommendation 12 – Enforcement

The federal government and the appropriate regulatory bodies should develop an understanding (MOU) concerning the issue of implementation and enforcement of recommended and accepted conditions.

Recommendation 13 – Mackenzie Valley Resource Management Act

The Minister of INAC should commission a second environmental audit of the Northwest Territories in accordance with S.148(1) of the MVRMA and / or order a specific review of the MVRMA.

Recommendation 14 – Surface Rights Legislation

The federal government should consider some legislative solution to resolve the current difficulty of surface access to land.

Recommendation 15 – Appointments

The Office of the Minister of INAC should establish a process that would anticipate board appointments and ensure that the appointments are timely.

Recommendation 16 – Minister's Directives

The federal Minister should clarify some issues involving the regulatory boards or the regulatory process by exercising his/her authority under the MVRMA.

Recommendation 17 – Ministerial Review under S.130 of the MVRMA

The federal Minister (INAC) should develop a protocol on the review and disposition relating to S.130 (MVRMA) decisions.

Recommendation 18 – Coordination of Federal Responsibilities

The federal government should explore a made-in-the-North equivalent of the MPMO that would be a single point of entry and assist in coordinating federal departments and the GNWT, as well as liaise with the regulatory bodies for all projects, major and minor.

The federal government should, with the collaboration of the Government of Nunavut, Nunavut Tunngavik Incorporated, the Nunavut Impact Review Board and the Nunavut Planning Commission, complete the *Nunavut Land Use Planning and Impact Assessment Act.*

The federal government should make completing Land Use Plans for all of Nunavut a priority.

The duplication of efforts by the Nunavut Impact Review Board and the Canadian Environmental Assessment Agency should be addressed.

All affected parties should make it a priority to participate in the five (5) year review of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA), so as to complete the review in a timely fashion.

APPENDIX B

2-2955

NEWS RELEASE COMMUNIQUÉ

MINISTER STRAHL ANNOUNCES INITIATIVE AND APPOINTMENT TO IMPROVE THE NORTHERN REGULATORY SYSTEM

Yellowknife, NWT (November 7, 2007) – The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, today committed to helping the North to realize its true potential by announcing a new initiative that will improve the overall northern regulatory environment, as well as the appointment of Neil McCrank as the Minister's Special Representative responsible to advance this initiative.

"It is essential that we maximize the potential benefits of resource-development projects, while protecting the environment, and to do that we must have predictable, effective and efficient regulatory systems across the North," said Minister Strahl. "To achieve this, I am proud to announce the *Northern Regulatory Improvement Initiative*."

The Government of Canada's *Northern Strategy*, outlined in the recent *Speech from the Throne*, includes a commitment to promote economic development and protect environmental heritage in the North, for which effective regulatory regimes are essential.

The *Northern Regulatory Improvement Initiative* is a strategy to improve the current regulatory regime, which is a shared system with shared decision-making responsibilities among many stakeholders – federal, territorial, and Aboriginal.

Minister Strahl added: "By appointing Neil McCrank to move this initiative forward, we are helping to ensure that regulatory regimes across the North are effective and predictable, and will better equip the North to develop and benefit from its resources in the best way possible."

Mr. McCrank will work to improve existing regulatory regimes across the North, which includes holding discussions with stakeholders in all three territories. Mr. McCrank will submit a final report to the Government of Canada outlining proposed recommendations for advancing the regulatory regime, after which Canada will develop a strategy for action.

Today's announcement also included an investment of $6.6 million over five years to address immediate operational needs in the Northwest Territories to ensure timely review of project proposals.

The *Northern Regulatory Improvement Initiative* will build on other successful activities already underway across the North, including:

- Amendments to the *Canada Oil and Gas Operations Act* to provide the National Energy Board with the authority to regulate pipeline access;
- Amendments to the *Mackenzie Valley Resource Management Act*, to ensure the basic principle of "one project, one environmental assessment";
- The Five Year Review of the *Yukon Environmental and Socio-economic Assessment Act*; and
- Accelerated development of the *Nunavut Land Use Planning and Impact Assessment Act*.

For more information, media may contact:

Indian and Northern Affairs Canada
Philippe Mailhot
Press Secretary
Office of the Honourable Chuck Strahl
819-997-0002

Media Relations
819-953-1160

Ce texte est également disponible en français.

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Canada

Mr. Neil McCrank is an experienced negotiator and lawyer who has extensive experience working in the public sector. As a senior Alberta Government official (Assistant Deputy Minister, Deputy Minister and Chairman) for over 20 years, he was involved in policy development and decision making at the provincial government level.

Mr. McCrank was Chairman of the Alberta Energy and Utilities Board from 1998 – 2007. During that time he was often involved in very complex, high profile and politically sensitive regulatory issues. In the role of Chairman, he was responsible for negotiating settlements and regulatory issues. During his tenure, he established a committee of First Nations and Métis chiefs and established a Community and Aboriginal Relations office to address energy development near Treaty lands.

For nine years before moving to the Alberta Energy and Utilities Board, Mr. McCrank was Deputy Minister of Justice and Deputy Attorney General for the Alberta Department of Justice. In these roles, he was involved with negotiations on developing strategies to address Aboriginal Justice issues. Mr. McCrank assisted in setting up the first Aboriginal police force, Aboriginal Court and correctional facilities in Alberta.

Mr. McCrank graduated with a law degree from Queen's University in 1969 and was called to the bar shortly after. He has a Bachelors degree in Electrical Engineering also from Queen's. He is a member of several boards including the Canadian Energy Research Institute, the Centre for Applied Business Research into Energy and the Environment, and the Institute for Sustainable Energy, Environment and Economy.

APPENDIX C
LIST OF PREVIOUS REPORTS

1. Report of the Auditor General of Canada 2005
2. Report of the Auditor General of Canada 2007
3. Northwest Territories Environmental Audit 2005
4. Report on the Joint Examination Project: An examination of the *Mackenzie Valley Resource Management Act* and Related Land Claim Agreements, December 2006
5. Northern Affairs Program, National Resources and Environment Branch: Review of Northern Regulatory Boards, April 2005, HDP Group Inc.
6. Examining and Improving the Relationships between INAC and Northern Resource Management: Advisory and Environment Assessment Board, April 2007, Terriplan Consultants

APPENDIX D
REGULATORY INITIATIVE – SUMMARY OF PRIOR REPORTS – RECOMMENDATIONS AND RESPONSES

April 2005 OAG Report – Chapter 6 – Indian And Northern Affairs Canada – Development of Non-Renewable Resources in the Northwest Territories

Focus of the audit
The audit examined how well Indian and Northern Affairs Canada is managing its responsibilities for the process set out in the *Mackenzie Valley Resource Management Act* for the development of non-renewable resources in the Northwest Territories (apart from the Inuvialuit Settlement Region). We looked at the process from the point at which one of the regulatory and environmental assessment boards receives an application for a permit and/or licence until a decision by one of those boards is made.

The OAG did not audit any of the boards' responsibilities for their practices, procedures, or internal administration; nor did we examine the roles that other federal departments and agencies play in the process. However, they did interview officials from the boards to understand how the Department is managing its responsibilities.

Objectives
The objective of the audit was to determine how well the federal government is managing its responsibilities associated with the process for the development of non-renewable resources in the Northwest Territories, other than the Inuvialuit Settlement Region.

Governance of resource development
- A reduced operational role for the Department in regulating development
- The Department needs to take a more active role to fulfill its responsibilities
- Guidance on key terms in the legislation needs to be provided
- Regulations for water should be established
- The Department needs to establish an effective process to ensure that the boards have the appropriate resources

Renewing the Department's role
- The Department needs to hold the boards accountable for managing the process
- Good reporting begins with a clear understanding of the accountability relationship
- The Department needs to establish an effective working relationship with the boards

Recommendations	
6.47 Recommendation. Indian and Northern Affairs Canada, in consultation with the boards under the *Mackenzie Valley Resource Management Act*, should develop guidelines for clarifying key terms in the legislation.	**Department's response**. The Department, with the boards throughout the Northwest Territories (NWT), has developed a process known as the NWT Board Forum. Through this forum, the Department will work with the boards to develop guidelines to clarify key terms of the legislation. These will be based on the precedent work already completed through the *Canadian Environmental Assessment Act*. A working draft for external consultation will be completed by 1 April 2006.
6.52 Recommendation. Indian and Northern Affairs Canada, in consultation with the boards under the *Mackenzie Valley Resource Management Act*, should develop standards for water and the Minister should direct the boards to use the standards.	**Department's response**. In consultation with the boards and water users, the Department will ascertain the information needs (with respect to water standards used by the boards to set licence terms and conditions) of water users and the best form to provide proponents with certainty. A report on information needs will be completed by the end of 2006. In consultation with the boards, the Department will develop water standards and set them out in codes, guidelines, policy, or regulations, as best fits the need. A completion date will be determined as part of the consultation. The Department will improve the system for notification to the boards of various standards. This will be an ongoing process.
6.59 Recommendation. Indian and Northern Affairs Canada should work with the boards under the *Mackenzie Valley Resource Management Act* to identify best practices and to assess training needs and provide for them, where appropriate. **6.60 Recommendation**. Indian and Northern Affairs Canada should work with the boards under the *Mackenzie Valley Resource Management Act* and other boards in the Northwest Territories to develop a permanent process for sharing best practices and solutions to the challenges they face.	**Department's response**. The Department has already met with some boards to discuss outstanding issues (for example, best practices, training needs, etc.) and has developed a process, which includes the NWT Board Forum, for ongoing dialogue to resolve those issues. This will become an ongoing agenda item at the next NWT Board Forum, scheduled for fall 2005. The Department will research and compile, as a starting point, best practices of other institutions of public government or expert organizations. The Department will prepare a preliminary report by fall 2005. The boards and government will utilize the NWT Board Forum as a key vehicle for discussing best practices and to assess training needs. The Board Forum meets regularly during each year. The Department expects that changes to the boards' operations resulting from these discussions will start to be reflected in 2006–07 strategic, business, and expenditure plans of the boards.

Recommendations	
6.68 Recommendation. Indian and Northern Affairs Canada should require that boards include in their annual reports to the Minister information not only on the board's financial performance but also on the way they manage their responsibilities for the process.	**Department's response**. All boards currently report on their financial performance annually. The Department will continue discussions with the boards to implement changes to their reporting requirements to reflect not only their financial performance but also on the way in which they manage responsibilities for the process. Changes to the boards' reporting documentation will be evident by the 2005–06 reports. This initiative will be linked to the development or improvement of strategic plans.
6.69 Recommendation. Indian and Northern Affairs Canada should require that reporting on financial and non-financial performance begin with the annual reports for 2005–06 and the Minister should make the reports public.	**Department's response**. Discussions regarding changes to the reporting requirements are already underway. The Department will work with the boards to expand and strengthen the content of the annual reports. Initial changes will be evident in time to be reflected in the 2005–06 annual reports.
6.76 Recommendation. Indian and Northern Affairs Canada, in consultation with the boards under the *Mackenzie Valley Resource Management Act*, the Aboriginal communities in the Northwest Territories, and other stakeholders, should clarify the roles and responsibilities of the boards.	**Department's response**. Bilateral discussions on roles and responsibilities with some of the boards are already underway and replies to our invitation from the others are pending. In addition, this will become an agenda item for the NWT Board Forum. The Department will also initiate discussions with the representatives of groups with settled claims to ensure that roles and responsibilities reflect the claims agreements and legislation. This is an ongoing process of updating, renewal, and evolution. First results will be evident by April 2006.
6.77 Recommendation. Indian and Northern Affairs Canada should work with each board under the *Mackenzie Valley Resource Management Act* to develop a strategic plan that includes a statement about the board's mandate, vision, and mission; strategies for achieving them; and measures to demonstrate performance.	**Department's response**. Discussions with some boards on the development of, or strengthening existing, strategic plans is already under way and will continue. Other boards will be contacted for bilateral discussions. In addition, this will become an ongoing agenda item for the NWT Board Forum. All the boards will be requested to develop a strategic plan by April 2006. The Department recognizes that strategic plans and performance measurements are not static and improvements will be ongoing.

Recommendations	
6.78 Recommendation. Indian and Northern Affairs Canada should include in its Report on Plans and Priorities for 2005–06 a section that indicates how it plans to address the recommendations in this chapter. In subsequent performance reports, it should demonstrate its performance against these plans.	**Department's response**. The Department will include in its Report on Plans and Priorities (RPP) an action/work plan that indicates how it plans to address the recommendations in this chapter and report on progress. The action/work plan will be completed by April 2006. Future RPPs will report progress and achievements.
6.83 Recommendation. Indian and Northern Affairs Canada should establish an ongoing process of consultation between the heads of the boards under the *Mackenzie Valley Resource Management Act* and the senior officials of the Department.	**Department's response**. The Department has requested that the boards increase and regularize their consultation with the government on key issues and will undertake bilateral meetings as required. In addition, the NWT Board Forum will be utilized as a key vehicle for ongoing consultation with the heads of the boards and senior departmental officials.

- to determine whether or not Indian and Northern Affairs Canada (INAC) has adopted appropriate management systems and procedures to successfully implement federal obligations within the Inuvialuit Final Agreement (the Agreement);
- to determine whether INAC has monitored its implementation of these obligations;
- to determine whether or not federal organizations have met specific obligations under the Agreement;
- to determine whether or not INAC has identified performance indicators; and
- to determine whether INAC has monitored and reported progress towards achieving the Agreement's principles.

Meeting Federal Obligations:
- obligations have been met for capital transfers, park creation, and land transfers
- No process has been established for exchanging land
- Federal organizations did not respect Agreement contracting obligations
- Economic Measures Review has not been acted upon
- Federal organizations implement environment and wildlife obligations

Federal Implementation of the Agreement
- lack of a strategic approach to implementing federal obligations
- no monitoring of achievement of the stated goals

Board member appointments
INAC, DFO, and Environment Canada are responsible for recommending appointments of 12 of the members and chairs to the five co-management committees, councils, and boards created by the Agreement. Members are appointed for three-year terms. We examined whether departments recommended these appointments in a timely manner, to ensure that federal positions would not remain vacant. We found that the federal government has been responsible for more than 60 appointments or reappointments to these boards since they were established. Twelve of these were delayed, seven of them in the last three years. Looking at all boards and positions, there were vacant positions for a total of more than 130 months, over the past 20 years. We found, however, that these delays often occurred due to the necessity of waiting for ministerial or Governor in Council appointments, rather than due to recommendations from department officials. These delays have at times prevented the Board from reaching quorum at meetings. Board members have voiced concerns that these delays compromise their ability to reach timely and appropriate decisions about proposed developments.

October 2007 OAG Report – Chapter 3 – Inuvialuit Final Agreement	
Recommendation	Response
Meeting Federal Obligations **3.30** Indian and Northern Affairs Canada should develop and implement clear processes for - ensuring the timely exchange of lands under the Inuvialuit Final Agreement, and - cleaning up and returning control of parcels of land identified in Annex R that are no longer required by the federal government. **(3.15–3.29)**	**INAC accepts this recommendation**. With respect to land exchanges, INAC will document the processes outlined in the Inuvialuit Final Agreement for use in future land exchanges; guidelines will be recommended for each step in the process to ensure timeliness by April 1, 2009. With respect to Annex R lands, INAC will review the process for cleaning up and returning control of parcels of land identified in Annex R and will make changes to improve its efficacy by April 1, 2008, drawing on the results of the removal of the encumbrance against title on Kittigazuit Bay, already under way.
3.45 Indian and Northern Affairs Canada should clearly communicate to federal organizations the Government of Canada's contracting obligations in relation to the *Inuvialuit Final Agreement*. In addition, INAC should define the Agreement's term "reasonable share." It should also provide guidance to federal organizations as to how to fulfill their contract obligations to award to the Inuvialuit a reasonable share of non-competitively tendered contracts that are related to the Region. **(3.31–3.44)**	**INAC accepts this recommendation**. The Department will complete its work with Public Works, Treasury Board Secretariat, and the Canada School of Public Service on the development of a Comprehensive Land Claim Agreement training module for all federal procurement officers by March 2008. INAC will also take a leadership role in working with signatories and the Department of Justice to define "reasonable share" by December 2007, and will share this definition with federal organizations in order that they may be guided in their fulfillment of obligations relating to federal procurement.

October 2007 OAG Report – Chapter 3 – Inuvialuit Final Agreement	
Recommendation	Response
3.46 In consultation with the Treasury Board Secretariat, Indian and Northern Affairs Canada, Public Works and Government Services Canada, the Parks Canada Agency, Fisheries and Oceans Canada, and Environment Canada should develop and/or enhance systems and procedures to enable them to monitor their compliance with the Inuvialuit Final Agreement's contracting provisions. To ensure compliance, these systems and procedures should monitor each federal organization's activities for - notifying the Inuvialuit of contracts related to activities within the Region; - awarding the Inuvialuit all contracts that are subject to public tender and related to activities within the Region, when the Inuvialuit submit the best bid; - awarding the Inuvialuit a reasonable share of contracts that are not subject to public tender, that are related to activities within the Region, and for which the Inuvialuit are capable of supplying the required goods and services on a reasonable basis; and - providing the Inuvialuit with contracts that relate to activities within the Region's national parks and landmark, on a preferred basis. **(3.31–3.44)**	**Agreed**. Indian and Northern Affairs Canada, in consultation with Treasury Board Secretariat and Public Works and Government Services Canada, will provide guidance to departments on the appropriate level of monitoring required to ensure compliance with this Agreement's and similar agreements' contracting provisions, as reflected in Treasury Board policy requirements. An interdepartmental working group has been established by Treasury Board Secretariat for the development of an amendment to the Treasury Board Contracting Policy, which will update the process for government procurement in the context of comprehensive land claims agreements. The amendment will clarify departmental responsibilities for monitoring and reporting requirements of Crown procurements undertaken in regions covered by comprehensive land claims agreements, including the Inuvialuit Final Agreement. It should be noted that departments do have systems to monitor compliance with the specific provisions of their contracts and that they recognize the need to monitor contract obligations relating to the agreements. To this end, Indian and Northern Affairs Canada, Public Works and Government Services Canada, the Parks Canada Agency, Fisheries and Oceans Canada, and Environment Canada will take measures to develop or strengthen, where necessary, systems and procedures to meet any new monitoring and reporting requirements that may be established by the Treasury Board within a year of their introduction. In addition, the five audited departments will give full consideration to this recommendation as they review and, where necessary, enhance current systems and procedures to monitor the awarding of contracts to the Inuvialuit that are not subject to public tender, when they are capable of supplying the goods and services on a reasonable basis. Work on processes governing federal procurement to include provisions for contracting in national parks is already under way, and will be developed to capture the same information for other comprehensive land claims agreements. This recommendation will be acted on by March 2009.

October 2007 OAG Report – Chapter 3 – Inuvialuit Final Agreement	
Recommendation	Response
3.53 Indian and Northern Affairs Canada should meet its responsibilities related to the economic review by - assessing reasons for lack of progress identified in the first review; - taking actions to respond to the first review; and - leading the completion of a joint economic measures review every five years until such time as the economic objectives have been met, as required in the Inuvialuit Final Agreement. **(3.47–3.52)**	**INAC accepts this recommendation**. An economic measures working group was established in February 2007. INAC will, through this working group, conduct assessments of community capacity and economic opportunities and assess reasons for the lack of progress by March 2009. Current plans call for the completion of the second five-year economic measures review in 2010.
3.76 Indian and Northern Affairs Canada should develop a strategic approach towards implementing Canada's obligations under the *Inuvialuit Final Agreement*. Such an approach should, at a minimum - identify each of Canada's obligations and the appropriate federal organizations to address them, and should clearly communicate their obligations to these federal organizations; - develop a plan to implement federal obligations; and - regularly monitor and report to other signatories Canada's fulfillment of its obligations. **(3.65–3.75)**	**INAC accepts this recommendation**. INAC will develop a strategy to effectively communicate federal obligations to federal organizations, by March 2008. INAC will develop a results-based management framework for the implementation of federal obligations in cooperation with relevant federal institutions, by fall 2008. INAC will also monitor and report on Canada's progress towards the fulfillment of its obligations to other signatories at Inuvialuit Final Agreement Implementation Coordinating Committee meetings.
3.85 In cooperation with the Inuvialuit, and with the Yukon and Northwest Territories governments, Indian and Northern Affairs Canada should develop performance indicators to measure progress towards meeting the principles of the Inuvialuit Final Agreement, and should publicly monitor and report progress to other signatories. **(3.77–3.84)**	**INAC accepts this recommendation**. INAC will propose performance indicators to all signatories at a future Implementation Committee meeting, with a view to monitoring and reporting on progress, beginning in spring 2008.

Northwest Territories Environmental Audit by SENES Consultants

This report is the outcome of the first Northwest Territories (NWT) Environmental Audit completed in 2004/05. The "Audit" was conducted pursuant to Part 6 of the *Mackenzie Valley Resource Management Act* (MVRMA) which requires an evaluation of the status of the environment, the effectiveness of methods to monitor cumulative impacts and the effectiveness of the regulation of uses of land and water and deposits of waste on the protection of key components of the environment from significant adverse impact. While the Inuvialuit Settlement Region (ISR) does not fall under the MVRMA, the ISR was included in the Audit as per the Audit Terms of Reference.

The Audit scope encompassed a vast land area and a broad spectrum of organizations and cultures. The Audit occurred at a time when systems and organizations were at varying stages of evolution and maturity. In some cases, these systems and organizations were undergoing the strains and stresses associated with the negotiation and settlement of land claim agreements.

In completing the Audit, SENES received input from of a wide range of organizations and individuals. Audit participants included members of the public, advisory boards and organizations, government departments and agencies, resource management boards, chiefs and councils, claimant organizations as well as individuals from industry and non-governmental organizations across the NWT.

The purpose of the Audit, as defined in the Audit Terms of Reference, is to:

- Comply fully with the legal requirements for environmental audits under Part 6 of the MVRMA and pursuant to the Gwich'in, Sahtu and T'licho Land Claims Agreements;
- Use the MVRMA framework as the basis for a territory-wide environmental audit that includes both the Mackenzie Valley and the Inuvialuit Settlement Region (ISR);
- Act as a catalyst for change, by providing specific, practical and constructive recommendations for improvements to environmental and natural resource management in the Mackenzie Valley, in the ISR and throughout the NWT;
- Lay the foundation for subsequent environmental audits in the Mackenzie Valley, in the ISR, and throughout the NWT by describing baseline conditions, identifying priority issues, highlighting opportunities for improvement, and suggesting how performance indicators could be developed to support ongoing monitoring and periodic audits;
- Reflect the objectives of ensuring sustainability and protecting and conserving wildlife and the environment for present and future generations that are embodied in the Land Claims Agreements;
- Consider impacts on the environment, including biophysical impacts and impacts on wildlife harvesting and on the social and cultural environment and on heritage resources;
- Focus on specific issues and topics, within each component of the audit that are relevant to decision-makers and other interested parties involved in environmental and resource management in the NWT;
- Focus on specific issues and topics, within each component of the audit, that are likely to result in recommendations that can be implemented by decision-makers and others involved in environmental and resource management in the NWT; and
- Result in data, analysis, conclusions and recommendations that can be applied distinctly to the Mackenzie Valley, to the ISR, and to the NWT as a whole.

Northwest Territories Environmental Audit by SENES Consultants

Key Findings

The major components of the NWT's regulatory regimes include: land use planning, regulation (i.e., issuance and enforcement of permits and licences) and environmental impact assessment. It is important to note that the Audit focussed on an evaluation of the *effectiveness* of these major components in protecting the environment from significant impacts, *not their efficiency*. Each of the components was discussed separately. The audit also provided an overview of the use of traditional knowledge (TK) in regulatory processes.

Land Use Planning
Regional land use planning in the NWT has been in progress since 1984, when the Basis of Agreement on Northern Land Use Planning was signed by the federal and territorial governments, with the participation of the Aboriginal organizations which existed at the time. The MVRMA, enacted in 1998, also established land use planning requirements. Despite these efforts, and requirements under the MVRMA, insufficient progress has been made in developing land use plans in the Mackenzie Valley. Today, less than 1/5th of the area covered by the MVRMA is protected by legally enforceable land use plans. The ISR has had a greater degree of success in developing and implementing its land use planning process.

In the ISR, Community Conservation Plans have been developed for the lands surrounding each of the Inuvialuit communities. Similarly, a comprehensive Land Use Plan consistent with the requirements of the MVRMA has been developed for the Gwich'in Settlement Area. While the Inuvialuit Settlement Region and the Gwich'in Settlement Area have developed land use plans that are playing an important role in identifying and protecting areas of environmental importance, progress in other parts of the NWT has lagged behind.

More than ten years after the signing of the Sahtu Dene and Metís Comprehensive Land Claim Agreement, a functional Sahtu Land Use Plan has not been developed or approved. Progress has been made in the Dehcho Territory, as evidenced by the recent preparation of a revised draft land use plan and background report. Little to no formal land use planning activity has occurred in the remainder of the NWT.

Environmental Impact Assessment
We found the Environmental Impact Assessment (EIA) regime to be protective of the environment within a consultative process. Initial proposal screening occurs through the regulatory framework and allows for input from all potentially affected parties. Where potentially significant impacts or public concerns were identified, these concerns were assessed in an appropriate manner, with the system deferring to a conservative approach in the event of uncertainty. Decisions have generally been protective, with the decision-making processes evolving in a positive direction. The Mackenzie Valley Environmental Impact Review Board (MVEIRB) has taken a leadership role in developing tools to ensure the effectiveness of the system.

Northwest Territories Environmental Audit by SENES Consultants

Key Findings (continued)

Concerns were expressed about the timeliness of EIA processes and about the number and nature of proposals being referred to Environmental Assessment. Data suggests that the time taken by the MVEIRB to develop Reports on Environmental Assessment (REA) is reasonable. The data also suggest that the number of projects referred to Environmental Assessment is not unwarranted and is reflective of the rights conferred under the MVRMA for the public to cite their concerns for proposed projects.

Regulation
Overall, we found that the MVRMA and ISR regulatory processes are adequately protective of land and water; however, regulatory and institutional gaps are preventing the regulatory system from managing potentially adverse impacts to all environmental components in an integrated manner. These gaps include, to varying degrees: the management of air quality; the management of social and cultural impacts; and compliance and enforcement. In addition, the assessment process for permit and licence applications is complicated by the absence of land use plans, as noted above. Much of the uncertainty of process being experienced is directly related to the absence of settled land claims.

Although they are different and relatively new, the regulatory regimes of the NWT are not substantively more complex than those of other jurisdictions. What is unique is the extent and proactive nature of community involvement, and the degree to which public input can influence the process. This focus on public involvement has provided value to the regulatory regime, but the current method of participation has come with a significant administrative and communication burden for all participants.

Despite improvements in community involvement and consultation, room for improvement remains. Current consultation practices were found to overload the capacity of local communities to participate in a meaningful manner. Additional community capacity challenges relate to differing expectations for public consultation, effective communication, and management of the consultation process within communities themselves.

Boards: In general, Boards are functioning effectively; however, the ability of the Boards to exercise their responsibilities and issue licences and permits in a timely and effective manner has been hampered by delays in a complicated and protracted nomination and appointment process. Boards are not providing sufficient information to monitor their performance. Reporting has focused on fiscal matters with limited performance and accountability information being provided. Board effectiveness may also be constrained by the limited training/orientation provided to Board members.

Northwest Territories Environmental Audit by SENES Consultants

Key Findings (continued):

Regulatory gaps: A major gap in the regulatory system is the failure of either Canada or the Government of the Northwest Territories (GNWT) to accept responsibility for the protection of air quality throughout the whole of the NWT. As a consequence, air quality impacts associated with activities in the NWT remain, with few exceptions, largely unregulated.

A second shortcoming in the regulatory regimes of the NWT is the absence of clear regulatory tools to assess and mitigate social, economic and cultural impacts from development. Although a variety of non-regulatory approaches are being used, such impacts are not being addressed to the same extent as biophysical impacts.

Enforcement: INAC, in its role as lead inspection and enforcement agency for regulatory instruments issued in the ISR and under the MVRMA, has developed an inspection process using a sound risk assessment approach, with inspection frequencies found to be adequate. The inspection and enforcement regime generally appears to be playing its intended role (i.e., to ensure that permit and licence conditions are enforced).

However, in some circumstances, uncertainty exists with respect to the enforceability and responsibility for enforcement of permit and licence conditions among INAC, GNWT, DFO, and Environment Canada leading to gaps in the development of permit and licence conditions and in the monitoring and enforcement of land use permits, water licences and wildlife management.

Traditional Knowledge
Historically, traditional knowledge was not used in the regulatory process. The use of TK was apparent in all stages of NWT environmental management processes. TK has played an important and, in some cases, central role in NWT land use planning, where this planning has taken place. It has also been used as the basis for decisions during regulatory processes and genuine efforts are being made to ensure that it is considered during Environmental Assessments.

Cumulative Impact Monitoring Program
In 1992, the Government of Canada committed to the Gwich'in that a method to monitor cumulative impacts would be provided. Since then, similar commitments have been made to the Sahtu, T'licho and, through the MVRMA, to all residents of the Mackenzie Valley. Despite years of planning, a Cumulative Impact Monitoring Program (CIMP) has not yet been implemented and limited regional/territorial environmental baseline and cumulative impact data are available to decision makers.

The absence of systematic approaches to identify, evaluate and respond to regional/territorial cumulative effects was identified as one of the most common reasons that projects are referred to Environmental Assessment. Regulatory decision-makers lack the tools necessary to make informed planning and approval decisions based on the regional/territorial cumulative effects of projects. This gap is tied directly to the absence of land use plans and a fully implemented CIMP.

Integration
By definition, the integration of the NWT's regulatory regimes requires that all of their components be fully operational; the absence of a single component has the potential to diminish the ability of the total system to adequately protect the environment.

At the time of the Audit, two major components in the NWT's environmental management regimes had not yet been fully implemented: enforceable land use plans had been established in the ISR and a small portion of the Mackenzie Valley and limited progress had been made on the Cumulative Impact Monitoring Program.

While both of these gaps constrain the performance of the system, we believe that the lack of land use plans is the more critical. These plans should reflect northern and Aboriginal values with respect to how lands and lives are to be impacted through development. In the absence of land use plans, regulatory and EIA Boards are being asked to make fundamental value decisions on a project-by-project basis. This has created uncertainty in the process for communities, developers, Boards and government and represents a critical stumbling block in efforts to meet the objectives of the MVRMA. Once land use plans are developed and administrative issues resolved, Boards will be in a better position to more effectively address their mandates under the MVRMA.

Land Use Planning
The lack of land use plans in many areas of the NWT is a significant void that is adding increased complexity and uncertainty to environmental management processes. Land use plans for the remaining portions of the NWT should be developed as soon as possible, with provisions established to honour these plans in areas where land claims have not been settled.

Regulation
A streamlining of the application notifications process is recommended, together with a study of the consultation process to identify those aspects that are working well and those areas that are ineffective and need revision. An evaluation of the capacity of Aboriginal communities to participate in environmental and resource management processes should also be completed. These two activities need to proceed in concert.

Boards: Streamlining of the nominations and approvals process, better Board accountability reporting and additional training and support to Board members is required to address these deficiencies.

Regulatory gaps: There is a clear need for action on a wide array of social and cultural issues. We believe that responsibility for addressing these issues rests primarily with government agencies that have health and social service mandates.

Northwest Territories Environmental Audit by SENES Consultants

Recommendations (continued)

Enforcement: Resolution of gaps in the development of permit and licence conditions and in the monitoring and enforcement of land use permits, water licences and wildlife management is needed to improve the regulatory framework.

Traditional Knowledge
Despite clear evidence that efforts are being made to use TK in environmental decision-making, numerous challenges to the process were identified. Increased emphasis needs to be placed on documenting TK and ensuring that it is passed between generations. Participants in the environmental management regime should be given the training necessary to ensure they have the capacity to collect and use TK effectively. Further, the expectations of all parties should be clearly stated in processes involving the exchange of TK.

Cumulative Impact Monitoring Program
While a lengthy planning process for implementation of the CIMP has taken place, work remains. The identification and implementation of specific monitoring needs requires further detail and long term funding has not been secured. A detailed operational plan for the CIMP needs to be finalized, funded and implemented. This should be an immediate priority.

Summary
The regulatory system is generally addressing the management of environmental issues with several noted exceptions. In this regard, resolution of issues associated with air and enforcement should be relatively straightforward. Resolution of social and cultural impacts, however, may be significantly more challenging and beyond the scope of the NWT's environmental management regimes. The absence of the CIMP, while providing challenges, does not have the same impact on the system as the lack of land use plans. The results of the environmental trends analysis can be used to prioritize responses to deficiencies in the system.

NORTHWEST TERRITORIES ENVIRONMENTAL AUDIT BY SENES CONSULTANTS	
HIGHLIGHTED OBSERVATIONS IN AUDIT REPORT AND SPECIFIC RECOMMENDATIONS	
LAND USE PLANNING Regional land use planning in the NWT has been in progress since 1984, when the Basis of Agreement on Northern Land Use Planning was signed by the federal and territorial governments, with the participation of the Aboriginal organizations which existed at the time. The MVRMA, enacted in 1998, also established land use planning requirements. Despite these efforts, and requirements under the MVRMA, little progress has been made in developing land use plans in the Mackenzie Valley. Today, less than 1/5th of the Mackenzie Valley is managed under legally enforceable land use plans. A greater degree of land use planning success has been achieved in the ISR. The lack of land use plans in many areas of the NWT is adding increased complexity and uncertainty to the regulatory processes for resource management and environmental protection. **Gwich'in:** The Gwich'in Land Use Planning Board has developed a comprehensive Land Use Plan and has implemented sound measures to maintain and update the Plan, consistent with requirements of the MVRMA. **Sahtu:** More than ten years after the signing of the Sahtu Agreement, a functional Sahtu Land Use Plan has not been prepared or approved. Within the Mackenzie Valley, outside the Gwich'in and Sahtu Settlement Areas, there is no legal requirement for the development of land use plans. However, the absence of land use plans has resulted in a significant void in environmental management processes.	**LAND USE PLANNING** **Recommendation 1:** The Sahtu Land Use Plan should be completed and approved as soon as possible. **Recommendation 2:** In partnership with Canada and the GNWT, Aboriginal groups in areas that lack land use plans should take immediate steps to develop and implement plans for their areas. This should be performed in consultation with interested parties. If required, provisions to honour these plans should be established until land claims agreements are settled. **Recommendation 3:** In areas where land use plans have been approved, and in new land use plans, consideration should be given to the identification of maximum development density thresholds.

Northwest Territories Environmental Audit by SENES Consultants	
Highlighted observations in Audit Report and specific recommendations	
Inuvialuit: In the Inuvialuit Settlement Region, Community Conservation Plans have been developed and are playing an important role in identifying and protecting areas of importance. Land use planning exercises independent of those required under the MVRMA and IFA have been and are being undertaken. Once implemented, these initiatives can make important contributions to environmental management. However, lack of certainty around the development and expansion of protected areas has encumbered regulatory and environmental impact assessment processes.	

REGULATION In general, the MVRMA and ISR regulatory processes are adequately protective of land and water; however, there are regulatory and institutional gaps preventing the regulatory system from managing other potentially adverse impacts to all environmental components in an integrated manner. While the MVRMA and ISR regulatory processes are evolving and have varying degrees of complexity, these processes are not substantively more complex than other jurisdictions with respect to the involvement of multiple permitting agencies (e.g., DFO, others). What is unique is the extent and proactive nature of community involvement and the degree to which public input can influence the process. This involvement has provided value to the regulatory regime; however, the current method of public participation has come at a cost of significant administrative and communication burdens. **Air Quality:** Neither Canada nor the Government of the Northwest Territories has accepted responsibility for the protection of air quality throughout the whole of the NWT. As a consequence, air quality impacts associated with activities in the NWT remain largely unregulated. **Water:** Overall, an adequate regulatory framework to protect water quality and quantity has been established and is being used to prevent significant water quality impacts from new developments. **Wildlife:** An adequate regulatory framework to protect wildlife has been established. Nonetheless, there are some concerns regarding the evolution and enforcement of the framework and potential influences that are beyond the control of the regulatory regime.	**REGULATION** **Recommendation 4:** Boards and governments should continue in their efforts to educate participants in the requirements of the approvals process. **Recommendation 5:** Canada (including the NEB), the GNWT and LWBs need to reach an understanding on jurisdiction over air quality throughout the NWT. Based on this understanding, appropriate regulatory tools for the establishment and enforcement of air quality standards should be created and implemented. **Recommendation 6:** The GNWT should conduct an evaluation of the effectiveness of approaches that are being used to prevent or mitigate potential socio-economic and cultural impacts attributable to development. Findings of this evaluation should be given to other participants in the regulatory process to assist them in developing better tools for impact prevention and mitigation.

REGULATION (continued)

Socio-Economics and Culture: In the absence of clear MVRMA regulatory tools to assess, prevent and mitigate social, economic and cultural impacts from development, a variety of non-regulatory approaches are being used by government and industry. Nonetheless, we heard from many interested parties that such impacts are not being addressed to the same extent as biophysical impacts. We agree; however, we were unable to determine if this has resulted in significant adverse impacts that can reasonably be addressed by an environmental management regime.

Heritage Resources: An adequate regulatory framework to protect heritage resources has been established and implemented.

Land Resources: Overall, an adequate regulatory framework to protect land resources has been established and is being used to prevent significant impacts from new developments.

Reclamation of Impacted Lands: An adequate regulatory framework to restore lands impacted by development activities has been established and implemented. Extensive efforts are being expended to address historic impacts.

Cumulative Effects: The absence of systematic approaches to identify, evaluate and respond to regional/territorial cumulative effects was identified as one of the most common reasons that projects are referred to Environmental Assessments. Regulatory decision-makers lack the tools necessary to make informed planning and approval decisions based on regional/territorial cumulative effects of projects. This gap is tied directly to both the absence of Land Use Plans and a fully implemented Cumulative Impacts Monitoring Program.

Security Deposits: Mechanisms are available to ensure liabilities associated with licences and permits issued under the MVRMA can be managed in case of default of the developer.

REGULATION (continued)

Recommendation 7:
The Sahtu LWB should augment its current summary comment tables to include a column that shows how each application review comment has been addressed (e.g., one consolidated disposition table).

Recommendation 8:
Federal and territorial departments should develop formal agreements and applicable training programs to ensure that all permit and licence conditions are subject to inspection and enforcement by appropriate *regulatory* authorities. As the lead department for the MVRMA, INAC should take the leadership role in ensuring this occurs.

Recommendation 10:
LWBs should ensure that permit and licence conditions are written in such a manner as to be inclusive of all mitigative and monitoring requirements and to provide operational flexibility while being protective of the environment by establishing performance-based requirements.

Recommendation 11:
INAC should work with the LWBs to investigate means by which confidential terms and conditions relevant to the environmental management process can be provided to LWBs without compromising confidentiality requirements.

REGULATION (continued)

Accountability and Feedback: The MVLWB and Gwich'in LWB are using disposition tables to systematically document and transparently respond to review comments. While the Sahtu LWB was tracking review comments, disposition of comments was not tracked on the summary tables.

Responsibility for Enforcement: There are jurisdictional questions over the assumption of responsibility for enforcement of permit and licence conditions among INAC, GNWT, DFO, and Environment Canada resulting in gaps in the development of permit and licence conditions and in the monitoring and enforcement of land use permits and water licences.

Inspection and Enforcement Processes: INAC's inspection process is based on a sound risk assessment approach, with inspection frequencies generally as often or more frequent than other Canadian jurisdictions.

Enforceable Permit and Licence Conditions: LWBs have not included all necessary conditions in permits and licences due to issues associated with the responsibility for enforcement of these conditions.

Communications between Boards and INAC: Ideally, LWBs, the MVEIRB and enforcement agencies should work collaboratively to identify appropriate conditions and follow-up on the enforcement of those conditions.

Fines and Penalties: Fines and penalties under the MVMRA and NWT Waters Act are substantively lower than those under other federal and territorial environmental legislation.

Environmental Monitors and Monitoring Agencies: Environmental Monitors and Monitoring Agencies assist the public to participate directly in environmental management. In addition to strengthening the enforcement function, their use has the potential to engender improved public confidence in the regime.

REGULATION (continued)

Recommendation 12:
INAC and the LWBs should collaborate on the collection and sharing of information required for licensing, inspection and enforcement activities, without compromising potential prosecutions.

Recommendation 13:
The fines and penalties provisions of the MVRMA should be amended to be more consistent with CEPA, the *Fisheries Act* and the *NWT EPA*.

Recommendation 14:
Institutionalized mechanisms to perform follow-up on the implementation of EA measures, particularly those which are not tied directly to a regulatory instrument, would provide an important improvement to the EA and regulatory system. To this end, it is recommended that the MVEIRB develop follow-up programs for Environmental Assessments, where appropriate.

Recommendation 15:
The MVEIRB should continue to develop tools for completing social and cultural impact assessment, and monitor developments in this area in other jurisdictions.

ENVIRONMENTAL IMPACT ASSESSMENT

The EIA regulatory regime and associated processes are adequate to be protective of the environment within a consultative process. Where potentially significant concerns had been identified, these concerns were assessed in an appropriate manner, with the system deferring to a conservative approach in the event of uncertainty. Decisions have generally been protective, with the decision-making processes evolving in a positive direction. MVEIRB is commended for taking a leadership role in developing tools to ensure the effectiveness of the system.

Preliminary Screening Process: From the inception of the MVRMA through the fiscal year 2004-2005, there have been 1,004 preliminary screening assessments. Of these, 31 projects, or about 3%, were referred to the MVEIRB for Environmental Assessment.

Referral mechanisms in s. 126 of the MVRMA provide additional checks and balances in addition to the initial screening process to foster protection of the environment.

Environmental Assessment Process: More projects have been subject to Environmental Assessment under the MVRMA than before the legislation was passed. This is partly due to increases in development activity and partly due to smaller projects being subject to the process. Where smaller projects were subject to EA, these referrals appear to be warranted based on the identification of environmental concerns during the EA process.

Since the inception of the MVRMA, the Environmental Assessment process has improved significantly.

Scoping: The MVEIRB has recently developed procedures to more effectively scope and streamline Environmental Assessments.

Mitigative Measures: MVEIRB's Environmental Assessment reports have improved since the Board's inception and now provide a clearer link between potential significant adverse impacts on the environment and recommended mitigation measures.

ENVIRONMENTAL IMPACT ASSESSMENT

Recommendation 16:
In situations where measures dealing with socio-economic impacts are made in EIA decisions and there is no associated regulation, governments should develop and use policy instruments to facilitate the implementation of the measures.

Recommendation 17:
Relevant government agencies need to place increased emphasis on the social, economic and cultural aspects of their mandates during EIA processes.

Recommendation 18:
The MVEIRB and relevant government agencies should more thoroughly assess climate change impacts, mitigation and adaptation in EAs, where appropriate for the nature of the project.

Recommendation 19:
The MVEIRB should have direct access to relevant government expertise at all stages in the EIA process.

Recommendation 20:
It may be beneficial for government agencies and departments to develop policy guidelines to communicate the rationale for when departmental participation is or is not deemed to be required at community hearings and public information sessions.

NORTHWEST TERRITORIES ENVIRONMENTAL AUDIT BY SENES CONSULTANTS	
ENVIRONMENTAL IMPACT ASSESSMENT (continued) **Feedback on Mitigation Measures:** The MVRMA EIA process lacks a feedback mechanism to confirm the implementation and effectiveness of impact mitigation measures. **Social, Economic and Cultural Issues:** MVEIRB is following the guiding principles outlined by the MVRMA by endeavouring to give thorough consideration to bio-physical, socio-economic and cultural aspects of the environment; however, governmental agencies party to the EA process continue to focus primarily on biophysical aspects of the environment. Environmental Assessment tools for social and cultural impact assessment are generally far less developed than those used to determine biophysical impacts. This situation is not unique to the Mackenzie Valley. **Climate Change:** The MVEIRB and government agencies are giving insufficient consideration to the potential impacts of climate change. **Cumulative Effects:** The MVEIRB has clearly demonstrated that it understands the critical role that cumulative effects must play in decision-making; however, required information on regional and territorial impacts (e.g., from the CIMP) is not readily available to the Board. **Participation of Government in Environmental Assessment:** The one-window approach used by INAC and the GNWT for interfacing with the MVEIRB is placing challenges on the effective and free flow of information between these organizations. **Environmental Impact Review:** There have been no environmental impact reviews completed to date under the MVRMA. **Effectiveness of the Process:** Participants in the EIA process under the IFA generally feel that the process is effective in avoiding/mitigating potentially significant adverse impacts. This is explained, in large part, by the collaborative nature of resource management institutions and the fact that the EIA process has had almost 20 years to mature.	

CROSS-CUTTING THEMES

Board Governance and Operations: The ability of the Boards to exercise their responsibilities in a timely and effective manner has been hampered by delays in a complicated and protracted nomination and appointment process. Permit and licence applications have been subject to delays and uncertainty has arisen due to these shortcomings.

Board Appointments and Quorum: Failure to maintain quorum has impacted the ability of the Boards to conduct business and discharge their mandated responsibilities.

Board Nominations Process: Aboriginal, territorial and federal nominating agencies have all contributed to delays during the nominations stage.

Board Appointments Process: The Board member appointment process is overly complicated and slow.

Board Member Criteria: There are currently no guidelines or criteria to assist nominating parties in selecting prospective Board members.

Board Training: Limited training/orientation has been provided to Board members.

Board Performance Monitoring: Boards are not providing sufficient information to monitor their performance. Reporting has focused on fiscal matters with limited performance and accountability information being provided.

Timeliness: Administrative and procedural issues have, at times, resulted in unnecessary delays in environmental management processes.

Environmental Assessments: The length of the pre-REA process is within a reasonable range. There may be opportunities to reduce the amount of time being taken by INAC and other Responsible Ministers to disposition EA reports

CROSS-CUTTING THEMES

Recommendation 21:
Nominating parties should submit nominees no later than four months prior to the expiry of a sitting member's term of office.

Recommendation 22:
INAC should complete its work with Boards on developing a better defined and transparent appointments process from the soliciting of nominees through to appointment by the Minister. Within this process, INAC should create a mechanism that allows nominating parties to track the status of nominees in the appointments process.

Recommendation 23:
INAC should streamline the appointments process and commit to completing the process within two months of a nomination being submitted.

Recommendation 24:
To the extent possible, the Minister of INAC should provide nominating parties with clear rationale for the rejection of nominees.

Recommendation 25:
The appointment period for Board members should be extended from the current 3 year term to a 5 year term. Where possible, appointments should be staggered to minimize the risk of failing to meet quorum.

Recommendation 26:
Similar to the MVEIRB, other Boards should prepare guidance regarding the job functions and expectations of Board members. This guidance should be provided to nominating organizations.

NORTHWEST TERRITORIES ENVIRONMENTAL AUDIT BY SENES CONSULTANTS

CROSS-CUTTING THEMES (continued)

Board Capacity and Resources: Taking into consideration systemic northern challenges, Boards, with some exceptions, are managing their internal capacity issues reasonably well.

Capacity of Aboriginal Communities: One of the most commonly cited and forcefully stated challenges facing the NWT regulatory process was that Aboriginal communities lack the capacity to participate in environmental management processes in a meaningful way.

Public Consultation: Public information and consultation has increased dramatically in the NWT. This is an outcome of both the regulatory regime that demands it happen and the increase in development activity. Despite improvements in community involvement and consultation, room for improvement remains. Challenges include: differing expectations for public consultation; effective communication; and, management of the consultation process within communities themselves. The extensive amount of information distributed during review processes has overloaded the capacity of local communities to participate in a meaningful manner.

Funding: Federal funding mechanisms are placing an administrative burden on many of the organizations that are responsible for environmental management in the NWT. This has distracted efforts that would be better directed towards environmental management activities. Federal budget allocations and funding processes fail to recognize the unique temporal requirements and limitations of the north. Commitment obligations and funding are in some cases incompatible. As development activities fluctuate, funding agreements must have mechanisms to reflect the associated fluctuating needs of the regulatory system.

Board Funding: Board funding levels appear to be adequate but lack the flexibility necessary to respond to changes in development activity.

Participant Funding: A participant funding mechanism for Environmental Assessments and other regulatory public hearing processes would improve the ability of the MVRMA regime to ensure effective participation of interested parties.

CROSS-CUTTING THEMES (continued)

Recommendation 27:
With full support from INAC, the Boards should lead the development and implementation of comprehensive training for Board members.

Recommendation 28:
INAC should work with Boards to develop and implement a public accountability reporting process with clearly identified standards, including performance relative to s. 58 of the MVRMA.

Recommendation 29:
Consideration should be given to extending the Preliminary Screening review timeframe beyond the current 42 days to facilitate community input.

Recommendation 30:
Prior to the submission of REAs, the MVEIRB should provide opportunities for Responsible Ministers to review and comment on proposed mitigation measures.

Recommendation 31:
INAC should develop and implement procedures to encourage a more transparent and accountable post-REA process.

Recommendation 32:
The next NWT Audit should evaluate whether adequate firewalls exist between the different mandates of regulatory authorities, particularly within INAC and the GNWT.

CROSS-CUTTING THEMES (continued)

Recommendation 33:
Government departments should identify and evaluate mechanisms to optimize the use of existing technical expertise, including collaborative measures between various levels of government.

Recommendation 34:
Building on previous work undertaken by the National Roundtable on the Environment and the Economy, INAC should fund an independent evaluation of the capacity of Aboriginal communities to participate in environmental and resource management processes. The findings and recommendations of this evaluation should be acted on.

Recommendation 35:
INAC should review the November 2004 Supreme Court ruling and assess whether there are any implications to the consultation process under the MVRMA for areas with unsettled land claims. The findings of this review should be shared with other participants in the NWT's environmental management regime.

Recommendation 36:
INAC should lead a study to specifically assess the consultation process to identify those aspects that are working well and result in public satisfaction, and those areas that are ineffective and need revision.

	CROSS-CUTTING THEMES (continued) **Recommendation 37:** Notwithstanding the outcome of Recommendation 36, Boards should develop a streamlined notifications and consultation process that reduces the potential to overwhelm the resources of interested parties (e.g., initial notice of projects to make interested parties aware of the permit/ licence application, with delivery of full documentation only to those parties that request this information based on their assessment of the initial notice of project). **Recommendation 38:** INAC should investigate approaches that could be used to ensure Board funding is capable of responding to changes in workload. **Recommendation 39:** A participant funding program should be established for Environmental Assessments and regulatory processes involving public hearings under the MVRMA. **Recommendation 40:** INAC should receive long term stable "A base" funding commensurate with its roles and responsibilities under the MVRMA. A review should be undertaken to assess appropriate funding mechanisms that will provide the funds in a timeframe linked to the constraints of the unique northern setting and institutional context.

TRADITIONAL KNOWLEDGE Traditional knowledge can make a variety of important contributions in environmental decision-making. Resource management institutions, government agencies, Aboriginal groups and communities of the NWT are gradually transitioning to a system that makes more effective use of this knowledge. **DEFINING TK:** While there is no common definition for TK, this has not had a significant impact on its effective use in decision-making. **POLICIES AND GUIDANCE:** Until recently, limited guidance has been available to assist participants in the environmental management process in using TK effectively. Progress is being made to resolve the issue. **TK AVAILABILITY:** The quantity of TK available has likely declined in recent decades. The absence of a fully developed CIMP has been detrimental to collection and preservation of remaining TK. **Original TK:** Unless knowledge of TK holders is taught to others and/or effectively documented, original TK may be lost. **Documented TK:** A vast amount of TK remains undocumented, with documentation of TK typically associated with areas of high development activity. This has left large geographic gaps in the TK record. **PERCEIVED VALUE AND ROLE OF TK:** Most participants in NWT environmental processes appear to recognize TK as a potentially important source of information for decision-making.	**TRADITIONAL KNOWLEDGE** **Recommendation 41:** MVEIRB's TK in EIA Guidelines should be reviewed by all participants in the environmental management process to assess their broader applicability. **Recommendation 42:** If requested, government agencies should assist Aboriginal communities in their efforts to collect and compile TK in a way that is amenable to use in environmental decision-making. **Recommendation 43:** All boards and government agencies involved in environmental management should ensure that relevant staff members are capable of understanding basic principles of TK collection and use. Training should be provided to individuals that lack this capacity. **Recommendation 44:** Regional Aboriginal leadership should develop guidance that clearly defines expectations regarding the collection, release and use of TK.

TRADITIONAL KNOWLEDGE AND ENVIRONMENTAL DECISION-MAKING

Significant efforts have been made to collect and consider TK during environmental decision-making processes. These efforts have been affected by a number of challenges.

Land Use Planning: TK has played an important and, in some cases, central role in NWT land use planning. Active participation of TK holders in land use planning exercises has assisted in ensuring that TK is used and interpreted properly.

Permits and Licences: Efforts are made to consider TK when it is available to regulatory decision-makers.

Environmental Impact Assessment: TK has played an integral role in some EIA decisions. EIA boards are making a genuine effort to ensure that TK is considered during their processes.

CHALLENGES ASSOCIATED WITH TK USE : There are numerous challenges associated with the collection and use of TK including: reconciling traditional and scientific approaches to understanding the environment; understanding what knowledge to solicit and incorporate; building the capacity to collect and explain TK in a meaningful manner; reconciling questions of ownership of TK; providing TK experts with appropriate compensation and acknowledgment; documenting TK so that it is accessible to future users; incorporating TK at an appropriate time in the decision-making process; involving both Aboriginal men and women in the TK gathering process; overcoming language issues and constraints to effective communications; and gaining acceptance of TK as valid information amongst end users.

TRADITIONAL KNOWLEDGE (continued)

Recommendation 45:
The participants in the system should review the issues associated with the compensation and acknowledgement related to the collection of original TK.

Recommendation 46:
Efforts to collect and use TK should include gender-specific considerations.

Recommendation 47:
INAC should establish and support forums for ongoing training and education to improve the common understanding of scientific and traditional knowledge terminology, issues and approaches. While these forums should build on existing project-specific initiatives, they should be free-standing, long-term initiatives.

Recommendation 48:
Verification of TK used in environmental decision-making should be carried out in a respectful manner.

APPENDIX E
REGULATING NATURAL RESOURCES IN THE NORTH

Introduction

Canada's North, the Yukon, NWT and Nunavut Territories, make up approximately 40% of the country's land mass, almost 2.6 million square km. The population however is only a hundred thousand, about 0.3% of the country. Sparsely settled, remotely located, little developed and subject to a harsh climate, the Territories largely depend on the development of mineral and petroleum resources and annual federal transfer payments for the regional economies.

Background

The current regulatory practices in the Canadian North evolved with the country throughout the last century. International interest and competition spurred the creation of the Yukon Territory in response to the Klondike Gold Rush. The quit claim by Norway to islands in the Sverdrup Basin enhanced Canada's claim to the eastern arctic archipelago. The echo of long-standing boundary disputes with the USA and Denmark endure today in the Beaufort Sea adjacent Alaska and in the Kennedy Channel adjacent Greenland. Canada's assertion of jurisdiction in, and sovereignty over, the frontier territories began in 1870 but can be seen presently with the exercise of various offshore and onshore regulatory powers, exploration (North American ocean ridge hydrographic mapping) and dominion (military security patrols).

Domestically, the twentieth century has also seen steady change in the place of the North in the Canadian mosaic. Never promoted as an attraction for homesteading or a route for a national railroad, the territories were not candidates for provincehood and are not found in the constitution of Canada. Creatures of federal legislation, less than a province, the territories have steadfastly strived for more autonomy and local control. Federal policy directions for the North were largely benign and passive throughout the 1940's and 50's and were driven for the most part by an interest in developing oil and mineral resources (gold, silver, lead, zinc).

Petroleum exploration gained momentum throughout the 1960's and took on a spirited pace after the Prudhoe Bay discoveries and the first OPEC oil crisis. Exploration boomed in the Mackenzie Delta, the high arctic islands and in the Beaufort Sea. The Berger Inquiry, while responding to the challenging Mackenzie Valley pipeline proposal, also dwelled at length on socio-economic and environmental issues, elevated the debate on the aboriginal condition and vaulted the North onto the national scene. The discovery and production of diamonds has enhanced the economies of the NWT, Nunavut and Canada.

Environmental Protection

Northern regulations take many forms and involve many players. Renewable and non-renewable resources have been regulated by either the federal or territorial governments to protect, manage and conserve water quality, varieties of terrain, bird, fish and mammal species, forests and archeological sites. Human behaviour has been regulated to manage public health and to encourage safe practices in the operation of mines, transportation and oil exploration and production.

Until the last decade, Indian and Northern Affairs Canada (INAC) was the most visible regulator, acting in the lands, forestry, water, mining and oil and gas sectors. Table 2 illustrates the INAC role. Table 4 briefly describes other federal regulators.

Changes to the regulatory regime have come from many directions. The *Territorial Land Use Regulations* were promulgated in 1970 in direct response to damaging uncontrolled summer petroleum exploration conducted in the Mackenzie Delta and along the western arctic coast. Research programs were also initiated into the effects and mitigation of such activities as seismic operations, well drilling, use of explosives and discharge to sumps. The application of the Regulations (i.e. land use permits) eventually spread over the following decade to Yukon and other districts of the NWT. Together with water authorizations and water licences issued under the *Northern Inland Waters Act*, land use permitting was administered by INAC as one of the most visible tools of environmental protection.

In the offshore, the unescorted voyage of the supertanker *Manhattan* through the Northwest Passage provoked a sovereignty response from Canada and the swift passage of the *Arctic Waters Pollution Prevention Act*. The sinking of the tanker *Torrey Canyon*, the loss of the drill rig *Ocean Ranger* and the grounding of the bulk carrier *Exxon Valdez*, created widespread demand for the improvement and regulation of rig safety, blowout prevention and relief, spill prevention and emergency response.

The Territorial, Federal and Supreme Courts have created case law affecting the regulation of northern natural resources. The *Hamlet of Baker Lake, Rafferty/Alameda, Oldman River, Sparrow, Delgamuukw* and *Haida Nation* decisions, for example, have borne directly on traditional hunting rights, caribou protection, federal super-added duties, the protection of aboriginal rights and honour of the Crown. Each has had a direct bearing on the extent, process or technique of regulation.

The Berger Inquiry, the Mackenzie Valley Pipeline Commission, raised the profile of aboriginal concerns and assertions. Land Claims were subsequently filed in Yukon and the NWT and accepted for negotiation. The first large settlement was the Western Arctic (Inuvialuit) Final Agreement in 1984 covering lands in the western NWT and the north slope of Yukon.

The (federal) Comprehensive Land Claims Policy was adopted in 1986 and it encouraged the final agreements with the Gwich'in, the Council for Yukon First Nations, the Sahtu Dene and Métis and the Inuit of Nunavut. The (federal) Policy Guide on Aboriginal Self-Government was adopted in 1995 and reflected most recently, in 2005 in the NWT, with the ratification of the T'licho Land Claims and Self-Government Agreement. The Nunavut Territory was established in 1999.

The northern claim settlement areas exceed the size of Europe. The lands negotiated by the various aboriginal beneficiaries exceed the size of France. Land claims are not concluded in all the regions of Yukon and the NWT and additional claims have been made in all three Territories from groups in British Columbia, Alberta, Saskatchewan, Manitoba and northern Quebec. Self-government negotiations are progressing with the Inuvialuit and Gwich'in.

Co-Management

Among the many notable features of the land claim settlements are the various treatments given to aspects of managing natural resources. Most of the final agreements deal in some form with the protection of heritage resources, the management of hunting/harvesting, land use planning, environmental assessment and land and water management. The approach negotiated has been one of co-management, that is, the sharing of environmental protection responsibilities through the establishment and empowerment, often by statute, of new advisory and regulatory bodies. (See Table 3 for an overview).

Environmental assessment and impact review is now under the jurisdiction of the (I) Yukon Environmental and Socio-economic Assessment Board, (ii) (Western Arctic) Environmental Impact Screening Committee and (iii) Environmental Impact Review Board, (iv) Mackenzie Valley Environmental Impact Review Board, (v) Nunavut Impact Review Board and (vi) Nunavik Marine Region Impact Review Board. In some cases similar responsibilities fall to the Canadian Environmental Assessment Agency.

Disputes between land owners and surface rights/access holders (i.e. explorers) currently fall under the jurisdiction of the (I) Yukon Surface Rights Board, (ii) yet-to-be-created NWT Surface Rights Board and (iii) Nunavut Surface Rights Tribunal.

Managing northern waters falls to the (I) Yukon Water Board, (ii) NWT Water Board and (iii) Nunavut Water Board. In the Mackenzie Valley, water and land management responsibilities are shared amongst the (iv) Gwich'in Land and Water Board, (v) Sahtu Land and Water Board, (vi) Wek'èezhìi Land and Water Board and (vii) MackenzieValley Land and Water Board. Land Use Planning is carried out by Boards in the (I) Gwich'in and (ii) Sahtu regions, and by the Planning Commissions in (iii) Nunavut and (iv) Nunavik Marine Region.

Challenges

The northern regulatory landscape is now more complex. More regulatory powers are now exercised by more bodies in more areas than ever previously. See Table 1. Previous jurisdictions of INAC and the two Water Boards have been replaced and supplemented by 20+ co-management bodies, each with their own membership, staff and advisers. The largest number of new Boards is found in the NWT.

Table 7

Land and Water Management / Environmental Protection Northern Boards

Advisory	Regulatory	Dispute Resolution
Yukon Environmental & Socio-economic Assessment Board	Yukon Water Board	Yukon Surface Rights Board
[Inuvialuit] Environmental Screening Committee, Review Board	NWT Water Board	[Inuvialuit, Gwich'in, Sahtu] Arbitration Boards[2]
Mackenzie Valley Environmental Impact Review Board	Mackenzie Valley Land & Water Board	
Gwich'in, Sahtu Land Use Planning Boards[1]	Gwich'in, Sahtu, Wekeezhii Land & Water Boards	
Nunavut Planning Commission	Nunavut Water Board	Nunavut Surface Rights Tribunal
Nunavut Impact Review Board		

1 Planning Commission and Boards make binding decisions respecting the "determination of conformity" for approved land use plans.

2 Arbitration Boards deal with access disputes in the absence of an NWT or Mackenzie Valley Surface Rights Board.

TABLE 2

MANAGING NATURAL RESOURCES IN THE NORTH INTO THE EARLY 1980s

(before Land Claim Settlements and before Devolution)

Territorial Lands Act (with Regulations respecting sales, leasing, coal, mining, forestry, land use, dredging, quarrying)	*Northern Inland Waters Act*	*Canada Petroleum Resources Act, Oil & Gas Production & Conservation Act*	*Yukon Placer Mining Act, Yukon Quartz Mining Act*	*EARP Guidelines Order*
Northwest Territories Act			*Yukon Act*	
Department of Indian Affairs and Northern Development Act				
British North America Act – Constitution Act				

Yukon Waters Act	*NWT Waters Act*	*Nunavut Waters and Surface Rights Tribunal Act*
Yukon Surface Rights Board Act	*[proposed NWT Surface Rights Act]*	
Territorial Lands Act		
Yukon Environmental and Socio-economic Assessment Act	*Mackenzie Valley Resource Management Act*	*[proposed Nunavut Land Use Planning and Impact Assessment Act]*
Yukon Act	*NWT Act*	*Nunavut Act*
Yukon First Nations Land Claims Settlement Act, Yukon First Nations Self-Government Act	*Western Arctic (Inuvialuit) Land Claims Settlement Act, Gwich'in Land Claim Settlement Act, Sahtu Dene & Métis Land Claim Settlement Act, T'licho Land Claims & Self-Government Act*	*Nunavut Land Claims Agreement Act* *[possible Nunavik Claim Settlement Act]*
Department of Indian Affairs and Northern Development Act	*Constitution Act (1982)*	

Table 4

Other Federal Mandates

Canadian Environmental Assessment Agency

The Agency administers the Canadian Environmental Assessment Act to produce comprehensive environmental assessments that support informed decision making. The Agency provides Guidelines respecting assessments by a Review Panel, public participation and certain procedures (e.g. the project registry, participant funding, climate change considerations, cumulative effects, biodiversity). The Agency provides the secretariat function to Review Panels.

Environment Canada

Under the Department of Environment Act, the department is charged to preserve and enhance the quality of the natural environment, conserve migratory birds and water resources and conduct meteorology. The dept. coordinates environmental policies and programs for the federal government.

Fisheries and Oceans Canada

DFO is charged with the management of Canada's inland and oceanic fisheries, habitat and aquaculture. In addition the dept. is responsible for shipping, navigation and aspects of marine safety. Notable legislation includes the Fisheries Act, the Oceans Act, the Navigable Waters Protection Act, the Canada Shipping Act and the Coastal Fisheries Protection Act.

National Energy Board

The NEB is responsible for the regulation of the construction and operation of inter-provincial and international pipelines and designated power lines, the export and import of natural gas, the export of oil and electricity and for the regulation of Frontier oil and gas activities. In the case of a determination respecting a pipeline proposal, the Board reviews economic, financial and technical feasibility and the environmental and socio-economic impacts of the project.

Transport Canada

As one element of its broader overall national transportation mandate (air, road, rail), MOT oversees the safety, security and marine infrastructure for the operation of passenger and cargo vessels. Related responsibilities include navigation safety and communications, port operations, ship inspection, transportation security and the transportation of dangerous goods (including bulk liquids and gases).

Environmental Screening Agencies
(in most cases activities need to undergo environmental screening BEFORE proceeding to Land Tenure or Regulatory issuance)

Land Tenure Issuing Agencies
(these are needed BEFORE "activity based" regulatory authorisations)

Regulatory Issuing Agencies
(these are needed BEFORE development activities can take place)

INUVIALUIT SETTLEMENT REGION (additional Advisory Agencies/Processes are IEICs and Community Conservation Plans)

Inuvialuit Land Claim Agencies (ISR)
- EISC
- EIRB

Public Boards
- NWT Water Board

Canada
- INAC & other Federal Departments (under CEAA)

GNWT departments

Inuvialuit land claim agencies
- ILA (surface leases, quarries)

Canada
- INAC (surface leases, quarry permits, easements, licences of occupation)

GNWT
- MACA (commissioner's lands)

Inuvialuit Land Claim Agencies
- ILA (Land use permits)

Public Boards
NWT Water Board (water licences)

Canada
- NAC (land use permits + inspections/ enforcement) also DFO, CWS, EC, TC, Parks, and NEB (project dependent)

GNWT
- ENR (timber)
- MACA (commissioners land use permits)
- PWHC & ARI (archaeology and science research)

MACKENZIE VALLEY REGION (additional Advisory groups are Renewable Resource Boards and councils, Land Use Planning Boards (Gwich'in / Sahtu / Dehcho (completion))

Land Claim based Public Boards (MVRMA)
- MVEIRB (assessment and reviews)
- Land & Water Boards (preliminary screening)

Canada & GNWT (MVRMA)
- departments with expertise or regulatory responsibilities (preliminary screenings)

Land Claim Organisations
- Gwich'in Land Administration
- Sahtu District Corporations
- T'licho governing bodies

Canada
- INAC (surface leases, quarry permits, easements, licences of occupation)

GNWT
- MACA (Commissioners land)

Land Claim based Public Boards (under MVRMA)
- MVLWB (Valley-wide)
- GLWB (Gwich'in)
- SLWB (Sahtu)
- WLWB (T'licho region)

Canada
- DFO, NRCan, TC, EC, Parks and NEB (project dependent)
  (INAC is not a regulatory issuer but inspects/ enforces Board-issued permits and water licences)

GNWT
- ENR (timber)
- PWHC & ARI (archaeology and science research)

NWT Environmental, Land Tenure and Regulatory Regime

Aboriginal Pipeline Group
Akaitcho Dene First Nations
Bob McLeod, Minister of Industry, Tourism and Investment,
Government of the Northwest Territories
Canadian Arctic Resources Committee
Canadian Association of Petroleum Producers
Canadian Boreal Initiative
Canadian Energy Pipeline Association
Canadian Environmental Assessment Agency
Canadian Parks and Wilderness Society – Northwest Territories
Canadian Parks and Wilderness Society - Yukon
Chevron Canada Resources
City of Iqaluit
Council of Yukon First Nations
Dennis Bevington, Member of Parliament, Western Arctic
Dennis Fentie, Premier of Yukon
Diavik Diamond Mines Incorporated
Ducks Unlimited
Ecology North
Environment Canada
Environmental Monitoring Advisory Board
Federal Council – Nunavut
Federal Council – Northwest Territories
Federal Council – Yukon
Fisheries and Oceans Canada
Floyd Roland, Premier of Northwest Territories
Fort Norman Métis Land / Financial Corporation
Gordon Van Tighem, Mayor of Yellowknife
Government of Nunavut
Government of the Northwest Territories
Government of Yukon
Graham White, University of Toronto
Gwich'in Tribal Council
Gwich'in Land and Water Board
Gwich'in Land Use Planning Board
Gwich'in Renewable Resource Board
Independent Environmental Monitoring Agency
Indian and Northern Affairs Canada

Industry Canada
Inuvialuit Joint Secretariat (Inuvialuit Game Council, Environmental Impact Screening Committee, Environmental Impact Review Board, Wildlife Management Advisory Council (NWT) and Fisheries Joint Management Committee)
Inuvialuit Regional Corporation
Kirk Cameron, Gartner Lee
Mackenzie Gas Project Partners (Esso, Imperial Oil, Aboriginal Pipeline Group, ConocoPhillips, Shell, ExxonMobil)
Mackenzie Valley Environmental Impact Review Board
Mackenzie Valley Land and Water Board
MGM Energy Corp.
Michael Miltenberger, Minister of Environment and Natural Resources, Government of the Northwest Territories
Mining Association of Canada
Natural Resources Canada
Northern Gas Project Secretariat
Northwest Territory Métis Nation
Nunavut Impact Review Board
Nunavut Planning Commission
Nunavut Tunngavik Incorporated
Nunavut Water Board
Northwest Territories Chamber of Commerce
Northwest Territories Water Board
NWT and Nunavut Chamber of Mines
Parks Canada
Petro-Canada
Prospectors and Developers Association of Canada
Sahtu Devolution Team
Sahtu Land and Water Board
Sahtu Land Use Planning Board
T'licho Government
Tulita Land Corporation
Tyhee Development Corp
Wek'heezhi Land and Water Board
World Wildlife Federation
Yamoga Land Corporation
Yukon Chamber of Mines
Yukon Conservation Society
Yukon Environmental and Socio-economic Assessment Board

APPENDIX C
QUESTIONS ASKED DURING CONSULTATIONS

1. Is the current regulatory scheme working well enough to enable responsible resource development, or do we need a fundamental re-ordering of the scheme?

2. If there is no need for fundamental change, what changes would provide for greater accountability and predictable and timely decision-making by all agencies involved with northern regulatory approvals?

3. Is there a need for more coordination within and between federal and territorial government departments? Would a 'major projects management office' or some similar type of agency help?

4. Are there major or minor policy gaps that should or must be addressed by government (e.g., water quality standards, air quality standards)?

5. Are there specific changes in regulations or legislation that need to be made - for example, to eliminate qualified language, define terms such as significant adverse effects, and provide more clarity for regulators and proponents?

6. Are there specific policy issues that need to be addressed (e.g., defining adequate s 35 Consultation)?

7. Would a regional environmental assessment approach be more effective or appropriate than the current project-by-project approach? For example, are there tools available to reduce the need to repeat the same comprehensive EA approach for each project - such as regional databases or strategic assessments?

8. Are there implementation issues arising from Land Claim Settlements that need to be addressed? (e.g. capacity, funding, and appointments of Board members). Can some of these be addressed now, rather than waiting for devolution or for all land claims to be settled?

9. Question to the northern Boards – Have your mandates, roles and responsibilities been properly defined for you by the Minister? Do you have the necessary tools (e.g. mandate document, orientation package, and training)?

10. Should INAC be involved in parts of the regulatory decision-making process (outside of its own mandated areas) and if so, how should it be involved?

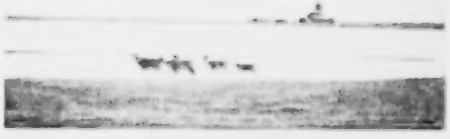
APPENDIX H

REPORT OF ROUNDTABLE DISCUSSION – TERRIPLAN CONSULTANTS, MARCH 2008

NORTHERN REGULATORY IMPROVEMENT INITIATIVE WORKSHOP

March 18th – 19th, 2008
Yellowknife NWT

Final Summary Report
Prepared for Neil McCrank



Prepared by Terriplan Consultants
April 2008

Terriplan CONSULTANTS

1.0 Executive Summary

The Northern Regulatory Improvement Initiative Workshop was a gathering of northern stakeholders held at the Explorer Hotel in Yellowknife, NWT on March 18th & 19th, 2008. The workshop preparations and implementation were contracted to Terriplan Consultants and sponsored by Indian and Northern Affairs Canada. The client for this work was Neil McCrank, Ministerial representative to the Honourable Chuck Strahl, Minister of Indian and Northern Affairs Canada (INAC).

Over 80 participants from federal and territorial government agencies, industry, environmental non-governmental organizations, and Aboriginal communities attended to offer their views on the future of the regulatory system in the north, with a specific focus on the Northwest Territories. The meeting was chaired by Mr. Neil McCrank who serves as the direct representative of Minister Strahl. Over the course of the two-day workshop, participants were provided the opportunity, both orally and in writing, to provide suggestions on how to refine and improve the current regulatory process.

A number of visual displays were made available throughout the workshop venue, PowerPoint presentations were made, and folders supplied to all participants contained a number of handouts. All of these materials are provided in this report.

Participants discussed a number of potential changes that could be made in the regulatory process, ranging from minor tweaking to substantive shifts in the regulatory approach and framework. All suggestions were recorded and taken into consideration in drafting this report, including minority opinions, where consensus was not achieved.

Following an opening prayer by Gabrielle Mackenzie-Scott (chair of the MVEIRB), the Northern Regulatory Improvement Initiatives Workshop began with opening remarks by Mr. Neil McCrank (Section 3.1). He began by expressing his appreciation for both the feedback received in the months prior to the workshop, as well as the effort made by all participants to attend this workshop. Following this introductory presentation, participants were invited to make their own opening remarks on the northern regulatory process. Several participants offered their insights and opinions on the current system, as well as their interpretation of the changes that need to take place (Section 3.2).

Ricki Hurst, of Terriplan Consultants, presented a summary of *"What Was Heard"* which was based on the notes that had been compiled throughout the past four months in over 100 meetings held by Neil McCrank with a wide array of stakeholders (Section 4.1). The advice and recommendations that Mr. McCrank received were summarized under the following six themes:

- Jurisdictions and Mandates
- Economic Development
- Timelines/Accountability
- Consultation
- Capacity and Resources
- Coordination Mechanisms

The first afternoon of the workshop involved the creation of four breakout groups, in which participants were asked to consider certain aspects of the northern regulatory process and mechanisms for its improvement (Section 5.0). The first group (Red Group) was tasked with discussing the future of the regulatory system and the pros and cons of making fundamental changes to it. The remaining three groups were each asked to consider what an ideal regulatory system for the Northwest Territories would look like and then to focus on an assigned topic area related to it. These included coordination (including discussion of the possibility of a northern Major Projects Management Office – Blue Group), consultation (Green Group), and timelines (Yellow Group).

The second day of the workshop began with brief opening remarks by Mr. McCrank, thanking participants for their insight and thoughtful contributions made during the opening statements and breakout groups throughout Day 1.

Following these opening remarks, the results of the breakout group discussions were presented to the plenary session (Section 5.0) to test the potential recommendations generated by each group. Willard Hagen (MVLWB) presented the 'Changing the Future' Red Group's results; followed by Chuck Brumwell (EC) for the 'Coordination' Blue Group; Mike Hardin (PDAC) presented for the 'Consultation' Green Group; and finally Tim Goos (EC) presented the 'Timeline' Yellow Group's results in plenary. Questions and discussion took place between presentations, and these are summarized in Section 5.0 of this report.

The floor was once again opened for plenary discussion of the question *"What's the one recommendation you want to make to Neil McCrank?"* Several participants took the opportunity to further articulate some of the key messages brought forward at the workshop or to raise new issues and advice for Mr. McCrank.

Prior to closing remarks by Neil McCrank, the plenary group offered congratulations and heartfelt thanks to Bob Bailey (Deputy Minister of ENR-GNWT) who is retiring this week after 34 years of service to both the federal and territorial governments of the NWT; his influence and presence will be profoundly missed. Mr. McCrank again thanked all participants for their contributions and expressed the seriousness with which he will take his responsibilities from this point forward. Mr. McCrank noted that at this point in the process he acts not as Minister Strahl's representative, but as the working group's representative to the Minister; acting in the capacity of a messenger of the goals and objectives of the workshop with the hope of setting in motion the tides of change in the northern regulatory system.

2.0 Introduction

The Northern Regulatory Improvement Initiative Workshop was a gathering of Northern stakeholders held at the Explorer Hotel in Yellowknife, NWT on March 18th & 19th, 2008. The workshop preparations and implementation were contracted to Terriplan Consultants and sponsored by Indian and Northern Affairs Canada (INAC). The client for this work was Neil McCrank, Ministerial representative to the Honourable Chuck Strahl, Minister of Indian and Northern Affairs Canada (INAC).

Over the four months prior to the workshop, Neil McCrank travelled throughout the north as well as cities in southern Canada to meet with stakeholders in recognition of the heightened interest and concerns expressed by NWT residents, Aboriginal groups, Boards, regulatory agencies, ENGOs, and industry with respect to the regulatory system north of 60°. Northerners have seen these concerns grow for the past several years, and recognition of these concerns has led the Minister to engage Mr. McCrank as his representative to lead a regulatory improvement initiative. To undertake this work, Mr. McCrank sought to understand the genesis and complexities of the existing regulatory system in the north and to gather information and recommendations from any other past regulatory initiatives.

A series of recommendations and comments were developed through the general workshop discussion and the assigned breakout group topics. The subsequent discussion provided some assessment and reactions to those propositions. It was noted throughout the workshop, and again in this report, that debate was encouraged, consensus was not a requirement for thoughtful suggestion, and each recommendation was included in this final workshop report for Mr. McCrank.

2.1 Purpose and Objectives

The purpose and objectives of the Northern Regulatory Improvement Initiative Workshop were to confirm the messages heard in the face-to-face meetings between Mr. McCrank and northern stakeholders during the past several months. As chair of the workshop, Mr. McCrank sought to bridge the gap between participant and facilitator and encourage discussion and debate about the existing regulatory system and potential changes. Furthermore, the workshop acted as a forum in which to test the potential of the generated recommendations for regulatory reform, including:

- Short-term Changes
- Long-term Changes
- Northern Major Projects Management Office (NMPMO)

Lastly, the workshop was designed to assess the willingness and ability of the participants (and their respective agencies) to consider and implement change.

2.2 Report Contents

Section 1	-	Executive Summary
Section 2	-	Introduction
Section 3	-	Building a Common Understanding
Section 4	-	What has Neil McCrank Heard to Date?
Section 5	-	Taking a Chance on the Future
Section 6	-	One Recommendation to Mr. McCrank
Section 7	-	Closing Remarks
Appendix A	-	Workshop Agenda
Appendix B	-	Participant List
Appendix C	-	Regulating Resources in the North
Appendix D	-	Guidance Questions proposed by McCrank
Appendix E	-	Workshop Visuals
Appendix F	-	Summary of OAG Reports and responses

3.0 Building a Common Understanding

Following the opening prayer led by Ms. Gabrielle Mackenzie-Scott, Mr. Neil McCrank gave his opening remarks. These are presented verbatim below.

3.1 Opening Remarks by Neil McCrank

Let me first of all thank everybody for being here this morning. I have probably met almost everybody in this room at some point during the last few months, and I know that every one of you is extremely busy. For you to take the time to come to this workshop at our request, at my request really, is I think a credit to what you believe is the true spirit of the north and what can be done to try to make improvements, if there are any that can be made. So just let me start by saying thank you for being here.

And thank you as well for your hospitality during the last 4 months that I've been spending time in the north and meeting with you, and I have spent a lot of time up here, as I'm sure some of you know. On every occasion it has been, as somebody pointed out to me when I walked in, an adventure and it has been, but a very pleasant adventure. You are truly very

great hosts and hostesses in this part of the world, and I've heard that of course from other people and had had some experience in the north before I took on this job, but I just wanted to make sure you knew that that continues to be my opinion. I'm sure I can't love the north like you do because I've not lived here long enough to do so, but I do love the north and it's been a great experience, so thank you very much.

The assignment that I was given really was encapsulated in Chairman Gabrielle Mackenzie-Scott's prayer, and that is to look at the regulatory system to see if there can be some jobs created at the same time as making sure the environment is totally and absolutely protected. If we accomplish what was said in the prayer this morning in the next couple of days, we will have accomplished a lot. Thank you for that prayer, Gabrielle – that was very nice – very well said.

You know that I've been given this job by Minister Strahl. He came up to the north in early November and introduced the issue of the northern initiative - part of which was for me to examine the entire structure of the three territories from a resource development/ regulatory point of view, to determine whether or not improvements could be made. Now there are a lot of other ways that this has been described, and if you look at the specific document of engagement from the Minister, there are different things that we talk about – capacity, we talk about northern federal government involvement on a go-forward basis, and a few other comments. What that really means to me - and I can only think in very simple terms - is whether or not there can be some improvements made to the system for the three territories, with an emphasis on the NWT. He also asked me to look at whether or not an office similar to the new office in the south, the Major Projects Management Office, would be of value in the north. Throughout the discussions that I've had with people that has been a subject of debate, and I'm interested in your views today as well.

Photo Credit: Gilles Binda, INAC

Figure 1. Workshop Day 1

The process that I engaged in, as I'm sure all of you know, is to try to get around to as many people and places as I could over the last few months and meet with people individually, meet with boards individually, meet with Aboriginal groups, meet with industry, with government departments, the ENGOs. Anybody that wanted to meet, I was open to meeting with – I hope that didn't look like I was just sitting down for the sake of trying to meet with people, but everybody did have a contribution to make, and it was important to get that fixed in my mind for later purposes.

Then the idea of having this roundtable was conceived, and I think it's a good idea – when you hear ideas and you only hear them from one side, it might be helpful to have it debated with the other side at the table – so that was the purpose of having this roundtable today. At no time, when we first started to think about it, did we ever contemplate that we would have the kind of representation we have today. I'm really, really pleased to see that people are that interested in this very issue, as I think you should be frankly, because it's a very important issue.

Following this roundtable, and you'll hear a little more about this as we go through the next couple of days, it's up to me to do my work beyond consultation - that is to write the report and make some recommendations. The plan is for me to have those recommendations in the Minister's hands around the middle of April, which isn't very far away. Some might say that we're doing this too fast; my wife would say we're doing this too fast [or too slowly] - she would like me to have been home during the past 3 or 4 months, which I haven't been. I think there's a sense of urgency based on what I've heard from almost everybody in this room, and certainly the Minister has laid out that timeline, and I propose to stick with it, if at all possible. I think there's good reason to do it that way. We've seen - and you have seen it more importantly than I have in the last number of years - some issues that have become very involved and have dragged on for lengthy periods of time. I always have the view that once that happens you lose focus on what it was all about to begin with. I don't think we've lost focus on what my role is, and by the end of April or middle of April, I hope we have not lost focus. And that's why there's a sense of urgency at least on my part.

You heard from Ricki what's in the folder before you. As well as the agenda, we've got the 'what we heard' over the last few months and that will be presented by Ricki in a moment – it's divided into 6 themes.

I hope that we don't focus on the words specifically in that document because that's just our best rendition of what we've heard. If there are issues to be taken with it, we've got two days to discuss those and set me straight on what I should have heard, but that's the document that will give us at least a foundation to work from. We also have in the documents, an inventory of the recommendations that have been made in the past, and one of the comments I'll make later is about that inventory. It provides a lot of the recommendations that have been made to improve the regulatory system and what the status of those recommendations is. There are also series of 10 questions that I used in my own mind when meeting with a variety of you over the last few months. I didn't ask all of those questions to each group, or to each of you individually, because some of them became of little consequence when I met individually. Generally, those were the kinds of issues that were going through my mind as we went through the consultation process.

There is also a document prepared by INAC that I refer to as the 'colouring book' version of how the system works in the north. It is complex, and I'll comment on that later, but I wanted to have something that would give us a clear quick roadmap through the system. And I think that does it, and gives a bit of history as to how it occurred as well.

So, if one is going to try to improve a system, we must start from an example of what the system should look like – what would be the ideal regulatory system. I just want to comment on that – I think that is what I can bring to this table. I can't bring to this table the wealth of knowledge that each of you has of the north, the environment and the history of the north, but I can bring a fair amount of knowledge with respect to how regulatory systems work. So, I'll just give you a notion of what I think a regulatory system would look like if it were a functioning regulatory system.

The first point is that the regulatory system should be ambivalent about whether or not there is resource development. The regulatory system is there to decide whether the development is going to take place responsibly, but it should not be either encouraging or dissuading development. That's up to other people. That's up to our political leaders in the north and those who live in the north to make that decision. I certainly wouldn't assume for one minute that I have any input into whether or not development should occur in the north – that's not my job. But if the decision is made to have development, and we heard in the opening prayer that there's a need for some jobs, if that's the case, then my role is to try to ensure that you have in place a regulatory system that is responsible and orderly and that respects the balance between economic development and societal and environmental concerns. That's my role.

So what does it look like? Well first of all I would suggest that a regulatory body that functions well understands its mandate, and the government understands its mandate, and it operates within that mandate. Roles and responsibilities are extremely important when governments set up agencies, boards and commissions, and both sides should understand what the role is – that's not always clear in any part of this country, having reviewed agencies, boards and commissions throughout the country in the last year for another project.

Secondly, those roles have to be understood by everybody – the industry, communities, the Aboriginal groups – everybody has to understand what the role of that body is – it's not just good enough for the agency and the government to understand what its role is, the public which is served by the regulatory body must also understand. The regulatory body has to set clear rules of engagement both in the application process and in the operational side of the business once approvals are granted, if they are. Those rules have to clear, concise, and they have to be enforced. The regulatory bodies have to be assured that if the applications don't measure up to the standards, that they are not acceptable. They have to be assured that once conditions are imposed as a result of the regulatory process within the mandate that body

has, that they are enforced. If you don't have that kind of process in place, the regulatory system doesn't make a lot of sense.

Regulatory bodies should be somewhat consistent – you don't have to be 100% consistent because the laws change in this country, our courts change laws every day, so while stare decisis, which is the rule of consistency based on precedents, exists in this country - it isn't 100% blanket – there have to be opportunities for change, but by and large there should be some consistency in decision-making.

Some predictability is necessary – if the same set of facts is put before a regulatory body, the same kind of decision will result. An effective regulatory body will make timely decisions, and those are by and large up to the bodies themselves to set in conjunction with their various stakeholders. Regulatory bodies in charge of the process should ensure that there is some performance measure or some timeliness goal that should be met.

And the regulatory body should be accountable. One might ask to whom are you accountable? You're accountable to your role and mandate based on the legislation and through that your structure is accountable to the government that set you up. Every day Ministers of the Crown, provincially and federally, speak on behalf of regulatory bodies. They are not responsible for the decision-making (the regulatory body is), but the government is responsible to ensure that the process has been properly followed. That's the accountability that flows from the regulatory body to the public through the government.

So the question is – does this system work in the NWT, in Nunavut, and in Yukon? I concentrated on the NWT – I did visit Yukon and Nunavut, but did not spend an extensive amount of time there, partly because what I observed over the short time I was there and what I've heard is that the system seems to be working reasonably well.

While there are bugs - there are always bugs in any regulatory system – they can be worked out. So I'm concentrating on the NWT.

Here's what I heard – Aboriginal groups would say (as least from what I heard) that development is fine providing it is responsible development, and there has to be some way of assuring Aboriginal people that this is occurring. I've heard from the Boards that things are reasonably OK, and I met with every board and there are lots of boards in this community. I've heard from governments that there should be some improvements made in some areas, depending on the kind of issue that arises. I've heard from the ENGOs (and I've still waiting for a formal report from them which I hope is coming) that there needs to be that continued measure of protection for the environmental community. I've heard from industry that it's becoming impossible to do business in the NWT – it's too complex, it's too unpredictable, it's inconsistent, there are no timelines, there are no standards, and if you don't have those rules, how does

one make a recommendation to make the investment that is required to do business in this part of the world? You'll hear more about that in a minute when Ricki goes through the 'what we heard' document. I'll just say this much – this is the best rendition of what I heard during the last 4 months – it may not be perfectly accurate – there may be word-smithing that should be done during the next day and a half so that we get it right. You'll get another opportunity later as you'll hear. What I'm urging you now is "let's get on with this process" and not spend a lot of time on redoing or re-looking at the specific wording of what we heard.

Photo Credit: Gilles Binda, INAC

Figure 2. Plenary Discussion

There are two questions that I think one has to address today. Is the system that we have, the structure, OK? If it's not OK, what kind of structural changes, if any, can be made to it? If it is OK, are there some changes around the edges (small changes relating to capacity issues, appointments, standards, land use plans) that you would recommend? I would say this: that when you look at the recommendations that have been made in the past, a lot of them have been just of that nature – the ones around the edges. Some have been adopted, some haven't. One has to ask the question – why not all of them? What's the delay? Why is there no inertia to get all of those recommendations implemented? Does it take you back to the question of whether there is a structural issue that has to be addressed?

There are a couple of realities that I want to point out. I think we all recognize that the decisions made about resource development in the north need to be made by the people in the north. I don't think there's any question about that in my mind; maybe others have a debate about that. This is evident in the way the land claims were settled, and the fact that there has to be local input for any resource development - I accept that totally. These are the people who will be impacted directly by development, and they should have a major input. My question is – can this continue to operate on a very localized basis? On a region by region basis? Will decision-making of a regulatory nature allow for or enable orderly and responsible development of the resources? I think that's a question I'd like to see you debate. Again, I'm not saying for a moment that local input is not important – it is absolutely important, in fact it is critical to what we're doing.

Another reality is that the federal government is currently involved in regulation in the north in many ways. That isn't going to change completely or dramatically over the short term. But,

should that involvement be to the extent that it is today or is there enough maturity in the regulatory bodies that have been developed that the federal government could back off some of its firm regulatory control? I'm interested in your thoughts on that.

The other realities that we know of – there are some land claims that have not been settled yet in this part of the world - those require some deliberate effort over time. Devolution has not firmly taken place in Nunavut and NWT.

I'll close by saying that I think everybody that has come to this session today has the right interests in mind. I think that everybody I've talked to in the north has impressed me with their genuine interest in ensuring that things are done right for the north for generations to come.

The regulatory system that has been structured is in place and is trying to mature. The question is whether or not we need the system to mature more rapidly than would be the case if we let it take its course over the next few years. That's the challenge we have before us for the next couple of days. I think that we have an opportuni ve heard from almost everybody that there can be changes made, there can be improvements made to the system, either structurally or around the edges. Both the Minister of INAC and the Prime Minister have a great emphasis on the north right now, so let's take the opportunity to give the Minister our insights and to try to make some changes that will work for everybody. I'd urge you over the next day and a half to work with us to provide your advice as I make some recommendations to the Minister by the middle of April. Thank you very much.

The opening remarks of participants are summarized below.

Willard Hagen
Chair MVLWB

Thank you for the invitation – we are attending on behalf of the MVLWB with great interest and a lot of ideas. The majority of the perceived problems in the regulatory process would be reduced if province-like powers were devolved to the GNWT. There is a disconnect largely as a result of legislation and regulations being lost in translation and implementation due to the distances between the NWT and seats of power (Ottawa). Capacity and funding are huge problems, which were highlighted in 2 reports from the Auditor General. We still haven't gone far enough. Perhaps 75% of the problems could be solved by devolution. The NWT regulatory system is complex – there are at least 17 regulators.

The history of the NWT is complex. Explorers came to find us; the second wave came to save us. Both revolved around the natural wealth of the NWT. The regulators still fill this role – trying to strike a balance between development and protection. I suppose that if enough people cry regulatory wolf, then perhaps there really is a wolf. There are no regulations that can't be improved, but there is one reality – the intent of the Constitution to protect land claim agreements and people's rights over 50% of the Mackenzie Valley. For better or worse, we have arrived here at this workshop. Lines in the sand are clearly defined in the provinces, so I hope that Neil clearly sees the numerous obstacles the NWT regulatory regime faces without devolution powers in the NWT. We believe that Mr. McCrank is here to listen, and we hope that 40+ years of land claim agreements and regulations will be respected. So, hopefully with all of our input and agreement, Neil will put together an honest and hard-hitting 'take no prisoners' report. Mahsi cho.

Gabrielle Mackenzie-Scott
Chair, MVEIRB

We're all key players here, and I'm really thankful for the invitation and also for getting to know Neil a bit. I want to say that I have my vice-chair with me - John Stevenson, and also Vern Christensen, our Executive Director, and John Donihee our legal counsel. The MVEIRB welcomes this initiative – our goal is a system which is predictable, effective and efficient. The workshop also provides us with another opportunity to communicate MVEIRB's issues and concerns and to hear yours. Only by achieving common understanding can we find a fair solution that includes developers and potentially impacted groups to promote a fair and timely process for all.

The Review Board wants to make the most of this opportunity. Our emphasis is on quality and timely impact assessments. We have worked on timelines and looked at others' best practices. This workshop is an opportunity to improve all our processes. The Review Board has two key recommendations:

(1) We need to have partners at these meetings – GNWT, land claim organizations and INAC. Without partners, improvement is not possible.

(2) We need to have the right capacity in place – on boards, in governments and at the community level. Increased funding is required for boards to do their jobs.

Finally, Ms. Mackenzie-Scott mentioned her long family history in the Mackenzie Valley and closed with remarks on working hard on behalf of everyone. Mahsi cho.

Norman Snowshoe
Gwich'in Tribal Council

Regulatory processes are the result of the Gwich'in Land Claim and others. Since 1992, the Gwich'in have participated in several reviews of the implementation of the land claims. The five- and ten-year reviews and the AG's report as well as the NWT Environmental Audit – all have recommended capacity improvements in communities. My father, Charlie Snowshoe, tells a story of seeing men doing seismic work on his trap line without any prior notice. Now there's a process to avoid surprises. Now we hear development is too slow and too complex. I guess that means we must be doing something right. Permit applications seem to cause capacity issues for communities and for government. DIAND put together responses to recommendations in the AG's reports and in the Audit. Recommendations:

(1) We need technical expertise in the communities, funded appropriately. Land Claims implementation is limited by funding and devolution is key to increasing the funding.

(2) Gwich'in Tribal Council is a big landowner in Yukon but is not included as a Yukon First Nation and consequently loses out on funding. That has to be fixed to enable our effective partnership.

(3) Legal responsibility and participation in EA in Yukon has to be addressed.

Gord van Tighem
Mayor of Yellowknife

I would like to welcome this group to Yellowknife in my capacity as Mayor and then change hats to represent the Association of Municipalities. I recall being in this room several years ago with proponents from Paramount Resources on day 78 of a 42- day review process. Timeliness is still a key issue. Predictability, consistency, and issues heard from the communities are also important. Communities experience changes due to development and expansion – impacts on municipal infrastructure are difficult to assess, but very important. With the large numbers of boards in the NWT, it would be great if educators could address the skills required to prepare people for board work.

George Barnaby
Sahtu Land and Water Board

I believe that I bring the community perspective to the meeting as there are few community members present. The responsibility for EA rests with the communities on whose land projects may occur. Board members don't have much training, but we are appointed to oversee this responsibility. Capacity and funding are needed to do this job. A lot of money is spent on staff, buildings, etc. which are necessary to our job. However, we are currently doing more than originally agreed under the land claims and should get extra implementation funding.

Training is also required – we train a lot of people through the SLWB offices and many of those people leave for jobs in industry and government. Retaining trained staff is an issue for us. We need to have an approved land use plan in place for the Sahtu area. The current system is much better than what we had in the 1970s. It is based on community knowledge and participation. Any changes we consider should not reduce the involvement of local people.

Violet Camsell-Blondin
Wek'èezhìi Land and Water Board (WLWB)

I wish to speak to eight items on behalf of my Board. (1) Funding – the current funding received through claims implementation does not account for the level of activity in the region. (2) Appointments to the Board are slow and the process in unpredictable. It is a challenge to meet regularly to deal with the volume of work, and this delays decision-making. The WLWB has never been at full capacity. (3) Permitting issues – settlement of the T'licho land claim was supported by industry to enhance predictability. The land claim must be implemented both in deed as well as in spirit. There are constant requests for intervenor funding, but this funding is very limited. (4) Land Use Plans are needed, and this would increase predictability. Industry and regulators need to know where development can and cannot proceed. (5) Guidelines are needed for board decision-making. Boards are taking steps to develop a policy in this regard. (6) Consultation processes – the Boards sometimes get conflicting messages from the federal government. (7) Federal coordination - it would help if different departments would work together to provide consistent statements and recommendations. (8) Any amendments to the MVRMA would require all parties to agree. All parties need to accept co-management. We're here to stay and want to be partners through increased communication and collaboration.

Walter Bayha
Sahtu Renewable Resource Board (SRRB)

The system has changed a lot since the 1970s – mostly through the involvement of local people. The Sahtu Land Claim established the integrated resource management system. When reviewing permit applications, the SRRB looks for gaps in other decision-making. Land Use Planning is essential. Boards frequently have to make decisions with no information. The appointment process stalls Boards' decision-making and is outside of their control. The system is functional, but needs fine tuning. First we need to get all the pieces of the integrated resource management system working and then look at broader problems and improvements to the regulatory system.

Stephen Ellis
Akaitcho

Mr. McCrank mentioned two types of improvements – tweaking and fundamental change. There is one piece missing and that is – who is responsible for dealing with assertions that Aboriginal rights are being infringed? Issues regarding treaty and Aboriginal rights are falling through the cracks. INAC is downloading responsibilities to the Boards, and it's not in the

Boards' mandates as they are not government bodies. Industry and the courts are in the middle. Some agency need to step forward to conduct the consultation process that is required by law to protect Aboriginal rights. Industry is frustrated by the assertions of aboriginal rights to land, so concerns are dumped into the EA process. Land use plans are needed.

Paul Boucher
Akaitcho

Welcome to Akaitcho territory. I am disappointed that no one has acknowledged that we are on Akaitcho land. Akaitcho has not accepted the MVRMA and does not recognize it. In 1992, the Akaitcho were given the right to implement their treaty. In 1973, the Courts recognized that they did not surrender their rights, and we are still in negotiations. A framework was established in 2000 to deal with development and regulatory issues. About 51% of the NWT GDP comes from Akaitcho territory. Regulatory processes and industry have to respect rights. How do we put in mitigative measures important to our people? This is a hot potato that no one wants to deal with. Let's look to solutions, and ensure all voices are heard.

Fred McFarland, Chair
Environmental Impact Screening Committee
(for the Inuvialuit Settlement Region)

Thank you for this invitation. I would like to begin by acknowledging the upcoming 25th anniversary of the Inuvialuit Final Agreement (IFA). The EISC stems directly from that the land claim; changes to the EISC mandate have been agreed upon by the signatories (Canada, GNWT and the Inuvialuit). The claim itself ensures that people participate in development within the environmental context. We have many partners at this operational level. Capacity is an issue for us at the screening and review levels and also at the community level. Currently, it is not unusual for the EISC to have 5-6 projects to review in a 30-day period. Capacity is also an issue for the co-management groups that provide valuable advice to the EISC. Basically the regulatory regime has not kept up with the claims, especially in regards to environmental assessment. Boards and committees make recommendations but have no processes by which to put them into effect, or to track their implementation. So called 'orphan measures' are becoming an increasingly important issue. Finally, there remains an important jurisdictional issue for the ISR over EA responsibility in Yukon. There is also a marine component of the ISR which raises several other issues with respect to regulatory authorities which do not exist under the MVRMA. Furthermore, the discussion of a streamlined or integrated EA/regulatory regime in the NWT seems to ignore the existence of very different claim agreement and regime in the ISR. These are all complex problems that complicate things for developers.

Bob Bailey
Government of the Northwest Territories (GNWT)
Thank you for the opportunity to participate. The GNWT has much interest in regulatory regimes in the NWT. Regulatory control could be added to the existing regime through devolution of control to the Territorial Government. Currently, regulation may not be functioning exactly as intended; cumulative effects are one example. Clearly there are some growing pains, which is not unusual as the system in relatively new. Also, this regulatory system is unique. We have a responsibility to shape its evolution to respond to northern needs. There is considerable room for improvement. I expect to hear northern solutions here over the next 2 days.

Alfonz Nitsiza
Wek'èezhìi Renewable Resource Board (WRRB)
Thank you – I am the interim chair (it seems like forever) of the WRRB. The Board is an institution of public government and must act in the public interest. We make recommendations on proposals for development. The WRRB is focused on proactive management and the co-management of wildlife. There is a shared responsibility for decision-making. WRRB is becoming involved in research, including TK, and has formed partnerships with governments and agencies, based on information sharing and coordination between wildlife management organizations. We expect the Board's focus on co-management to increase.

Phil Jennings
Major Projects Management Office – NRCan
The MPMO was established as a response to issues and opportunities for the regulatory review of major resource projects south of 60. While the approach of the MPMO initiative could have beneficial application in the North, there are unique regulatory challenges and arrangements in the North; how the approach would have value in the North depends in part on the discussion here today. The North has tremendous resource potential, and there are many opportunities related to the responsible development of that potential. Recent growth in major resource projects has stretched departments and agencies. Funding in recent budgets has recognized the need to maintain strong environmental standards, and capacity from the MPMO initiative is being directed to areas of greatest need across the country. The MPMO is constrained by its mandate to south of 60. The Office does not impact on the existing statutory authorities of regulatory departments and agencies, but assists these parties in increasing the efficiency and effectiveness of the regulatory process through better definition of roles and responsibilities for regulators, stakeholders, departments and project proponents. The Office is also aiming to improve the functioning of the system through performance measurement, accountability and transparency. The MPMO concept is also based on recognition by Ministers that regulatory systems evolve; and the MPMO is a catalyst to ensure that the evolution reflects responsible development.

Ed DeBruyn
DFO

This workshop is a good idea – it puts all of the puzzle pieces into one room. Our mandate today is to show you what our pieces look like. DFO has a broad mandate covering fish, fisheries management, and fish habitat, and the department is a decentralized organization. The Fisheries Act says that development in and around fish habitat may need regulatory approval. It is a powerful piece of legislation and is accompanied by well-developed policy tools – for example, the 'no net loss' policy. DFO proceeds in a coherent decision-making process. Industrial development and environmental protection go hand in hand, with an emphasis on shared responsibility. We're all here to roll up our sleeves, to learn from others and to share our experiences.

Glen Bishop
CAPP – ConocoPhilips

Industry carefully crafts its activities around regulatory processes. I bring international experience to the table in my role with CP, and I am certainly struck by my experiences in Canada over the past four years. Regulatory processes are much more complex here in Canada, especially with land claims. Abroad, I might consult a lawyer or a regulatory expert 5 times a year – here it is almost daily. It is rare that projects aren't elevated to the EA level in the NWT, but this is not the case elsewhere throughout the world. It appears that regulators here need clearer direction from government, allowing more efficient development of resources. Predictability is key. People in the north are in a similar ambition to Norway. Development offers opportunities, but in my experience projects such as the Mackenzie Gas Project, seem to get further away and start dates are put off. This is not solely due to regulatory processes - costs are obviously an issue – but there is clearly room for improvement in processes. CAPP is being proactive in coming up with solutions. There is no intent to short-circuit the process, but industry wants regulation, predictability, and regularity. To be successful, communities must see the success and share in it.

Elizabeth Swanson
Canadian Energy Pipeline Association – TransCanada

From CEPA's perspective, we share the boards' and communities' desire to see the best decisions made, and we share industry's desire to develop. We have a common desire to get to good decisions by making processes more certain. Processes can be complex as long as they are predictable. Timeliness is also important, but not as important as certainty. The issue for industry is not so much that there are 200 steps to climb, but that we understand that there are a certain number of steps; sometimes when we get to the top, there is another stairway that we didn't anticipate.

Bob Reid
APG

The Aboriginal Pipeline Group (APG) is a partner in the MGP, and we are acutely aware of the complex regulatory environment. There is considerable risk to development without initiatives like this one we are involved in today. NEB and CEAA have responsibility for pipelines. Frequently, CEAA is grafted onto NEB review processes and this works smoothly. Recently 'substitution' has been tried on a pipeline project in New Brunswick. This substitute authority approach provides a single window, which is ideal for a linear project like a pipeline. Federal paramountcy or Federal Pre-emption applies when a project crosses a provincial boundary – in the south, provincial legislation does not apply to NEB projects. The North is different – it's like a patchwork quilt with no directed growth. There is a dispersal of federal authority to boards etc. because of the land claims and local factors. As the boards are all federal, the principle of federal pre-emption does not apply. The Joint Review Panel (JRP) for example was created to deal with the issue of amalgamation of boards, but failed. The JRP is over a year behind schedule; it is not accountable to anyone and is losing its sense of purpose. APG looks forward to participating in this workshop to find workable solutions. It is essential that this be done.

Gordon Peeling
Mining Association of Canada

I am encouraged by the number of stakeholders and the breadth of their interests here. Stewardship of the environment and development of resources in a manner sensitive to the needs of communities is a key issue. The time required to go through any regulatory process is also a key issue. We need timelines and the discipline to keep to them. Licence renewals are time-consuming and expensive for developers and boards alike. Clear, transparent standards are required for operators. 'Orphan measures' are a concern, as some areas are not clearly covered by legislation or regulation. Single-project agreements are a reflection of gaps in the system that should be filled. Boards should be properly resourced, and there should be permanent mechanisms to fund the Boards, and to nurture, train and support them.

Melody Nice-Paul
Executive Director, Gwich'in Renewable Resource Board

The GRRB is an institution of public government created by the Gwich'in Land Claim. The GRRB was not part of Mr. McCrank's initial discussions and would like to be included in future consultations. (note that Neil McCrank met with Melody the next day).

Philip Bousquet
Prospectors and Developers Association of Canada
PDAC believes there are several important items to be addressed – define consultation requirements, settle land claims, support boards and develop capacity. Regular dialogue is important, and this workshop is important as a part of that process. It is critical that boards be aware of companies' good practices. Dialogue can contribute to setting clear thresholds, expectations and timelines. PDAC has made a written submission to Mr. McCrank which includes recommendations – it is available on the PDAC website.

Jennifer Morin
Canadian Parks and Wilderness Society – NWT Chapter
CPAWS-NWT has worked with NWT communities, territorial and federal government, other conservation organisations, and industry to identify and protect important cultural and ecologically significant areas. Our Chapter was formed in Yellowknife by volunteers over a decade ago. Since that time, we have primarily worked with the Dehcho and Sahtu communities. Conflict has occurred between development and protection interests. The MVRMA has a feedback loop (auditing process), and it is important. There are many good recommendations in the NWT Environmental Audit. Some recommendations have been implemented since the report was released in December 2005, but all in all the process is not very far along, and that is an issue. The Boards need more capacity. Land claims are not fully settled and this has created conflict. Even in the Sahtu region where there is a settled claim, prospecting permits have been issued against the wishes of the Sahtu people – land use plans would help resolve these conflicts. Appointments to the Sahtu Land Use Planning Board have been delayed and currently the Board does not have quorum so progress can not be made. Land Use Plans should be approved in advance of major projects. We also need a larger strategy to act to fill these gaps in the regulatory system. Participant funding is also an important issue for CPAWS and other ENGOs, but also for communities.

James Caesar
Vice Chair, Sahtu Secretariat Inc (SSI).
The improvements we're working on are important to the regulatory system. The Sahtu Land Use Plan is in its second draft, and it deals with areas that are up for development. This working document is being quoted and honoured and should become a formal part of the regulatory process. Capacity is an issue – we need people who are going to be able to do the work that's required. We have to be cognizant of the Constitution – if we're not recognized, we have to raise our voices. The co-management boards need adequate funding and resources to deal with the provisions stated in the comprehensive land claims. Overall, if this meeting recommends changes, we'll need funding and technical resources to deal with them.

4.0 What Has Neil McCrank Heard to Date?

4.1 Presentation by Ricki Hurst

Northern Regulatory Improvement Initiative
Workshop – March 18th-19th, 2008
Yellowknife, NT

What was heard.... a sampling
December 2007 to March 2008 Presentation to Workshop: Neil McCrank Regulatory Improvement Initiative March 18, 2008

This presentation is not a formal report on the meetings held by Mr. Mc Crank, nor does it presume to reflect the entire content of the meetings. The purpose is to provide a quick overview of the range of comments and opinions expressed on some key issues - with the hope that this workshop will provide further insight.

Face to Face Meetings (Dec -Mar) About 100 meetings + Written Advice
• INAC, EC, DFO, CEAA, NRCan, PC, NGPS+ • YTG, NG, GNWT (Premiers + staff), City • MVEIRB, MVLWB, IJS, GLWB + (Dec -Mar) • Akaitcho, GTC, Sahtu, DFN, IRC, Métis, T'licho + • NWB, NPC, NIRB, YESAB, CYFN + • EMAB, CPAWS, DU, Boreal + • APG, CEPA,CAPP,MGP, MAC, PDAC, Chambers +

Questions asked by Mr. McCrank

- Is the current regulatory regime working well enough to allow for responsible resource development? Does it require restructuring?
- If the system does not require restructuring, what changes would allow for accountability, predictable and timely decisions?
- Is there a need for more coordination amongst government departments: whether territorial or federal?
- Are there major or minor policy gaps that need to be filled?
- Are specific changes in legislation or regulation needed?
- Are there specific issues that need to be addressed, including implementation issues?
- Have the mandates, roles and responsibilities of Boards been properly defined?
- Should INAC be involved in parts of the regulatory decision making process? How?

What Was Heard: by theme

- Jurisdictions and Mandates
- Economic Development
- Timelines/Accountability
- Consultation
- Capacity and Resources
- Coordination Mechanisms

JURISDICTIONS & MANDATES

Participants said...

- We need more positive coordination and communication, amongst boards, and with and amongst federal departments, at all stages of project development.
- Federal departments are often inconsistent in their approach (e.g. to the Joint Review Panel) - there is no consistent federal message.
- There is a need to resolve the overlapping jurisdiction for the North Slope between Yukon (YESAA) and the Inuvialuit.
- Devolution (and the potential for imminent devolution) adds another layer of complexity to the system.
- Full implementation of the MVRMA and a 5-year review of MVRMA would address many issues.
- A surface rights tribunal with adjudication powers would clarify land access and help with certainty.
- There is a need to fill gaps in the regulatory framework– e.g. barge-mounted fuel storage is unregulated in the Mackenzie Delta.
- It is unclear to whom the Boards really answer.
- Boards include conditions in authorizations that are beyond the scope of their mandate, and can not be enforced by INAC inspectors (orphan measures).
- There is no system to monitor the implementation or effectiveness of conditions.
- There is a general and functional disconnect between regulators and INAC inspectors.
- We need standards for the NWT, such as air quality and water quality guidelines, that can be applied consistently by the Boards and other regulators

Jurisdictions & Mandates

Participants said...

- The information base for biophysical impacts is greater than that for cultural or economic impacts.
- There is an urgent need to complete land use plans to guide proponents, boards and regulators.
- There will be less surprise or opposition to development when there is confidence that:
  - Critical cultural and ecological areas are protected
  - An impartial third party is monitoring impacts
  - A robust and proactive plan is implemented to prevent wide spread impacts of cumulative effects.

The Auditor General wrote in 2005

A (second) shortcoming in the regulatory regimes of the NWT is the absence of clear regulatory tools to assess and mitigate social, economic and cultural impacts from development. Although a variety of non-regulatory approaches are being used, we heard from many interested parties that such impacts are not being addressed to the same extent as biophysical impacts.

Economic Development

Participants said...

- the northern regulatory regime, because of the way it evolved, is just too complex.
- Some NWT residents feel there is too much development, and too fast, whereas others want more.
- Government and residents sometimes feel differently about development; government generally wants to speed it up, but many residents have concerns.
- Too many projects (it seems like virtually ALL projects) go to environmental assessment.
- The regime created under the MVRMA was a new paradigm in resource development - in the NWT, the right to develop or explore doesn't automatically exist, but needs to be earned - the 'free entry system' is an 18th century concept which doesn't necessarily work in the 21st century.

The Auditor General wrote in 2005

The investment climate for non-renewable resource development (in the NWT) is uncertain, in part because the Department...INAC... has not adequately managed its role in the process that considers development projects.

TIMELINES / ACCOUNTABILITY

Participants said...

- Permitting of a major development proposal should take months, not years.
- There are too many permits required for small projects.
- Boards should focus on the big projects or those with potentially important impacts.
- To be truly competitive, timelines need to be "nailed down." This would help regulators work quickly and with accountability.
- The JRP reports to no one and has no timelines.
- There are some timelines in the regulatory system, but they are often ignored, and there are none for consultation.
- Permitting is dependent on completion of access agreements – but there are no guidelines or direction; each is unique.
- It takes too long to get Ministerial approvals after all the work has been done
- Where land claims have been settled, there are some timelines for permitting. But for the full environmental impact review, that's where the process slows down - sometimes for other agenda - firm timelines should be attached to such processes.
- Because the Yukon is in a post-devolution context, they do not suffer from split authorities and can troubleshoot, which makes a significant difference (as compared to the NWT). The fact that industry knows who is really responsible provides an additional layer of accountability.

THE AUDITOR GENERAL IN 2005, WROTE

- Good reporting begins with a clear understanding of the accountability relationship.
- Before the boards can develop appropriate accountability reports, there is a need for clear direction from the government on the roles and responsibilities of the boards.

CONSULTATION

Participants said...

- Over 9000 permits will be required for the Mackenzie Gas Project and at each one, someone could state that they had not been adequately consulted.
- The Government is unwilling to say what is adequate consultation, and so people do not know how far to go. Boards need measures to deal with potential infringements of Aboriginal rights.
- There is consultation overload.

IT WAS ALSO SAID THAT...

- With consultation comes accommodation and the Boards cannot address accommodation.
- The role of Boards in consultation is a significant issue as INAC believes they are agents of the Crown whereas Boards do not necessarily agree; legal opinions also differ.
- There is a need for consultation guidelines.

NWT ENVIRONMENTAL AUDIT 2005 SAID...

(...) Despite improvements in community involvement and consultation, room for improvement remains. Challenges include: differing expectations for public consultation; effective communication; and management of the consultation process within communities themselves.

THE NWT ENVIRONMENTAL AUDIT RECOMMENDED IN 2005...

INAC should review the November 2004* Supreme Court ruling and assess whether there are any implications to the consultation process under the MVRMA for areas with unsettled land claims. The findings of this review should be shared with other participants in the NWT's environmental management regime.

CAPACITY AND RESOURCES

Capacity and boards...

- There are too many levels of regulators, and too many boards for such a small population.
- Board Appointment process is slow and unpredictable.
- There are at least two Board funding issues – how and how much Boards are funded.
- Funding alone will not resolve NWT capacity issues.
- Boards and Board staff need training programs.
- A centralized technical group could provide scientific and administrative support to a number of boards.

Capacity and communities...

- The EA process depends heavily on communities, some of which are very small and without capacity.
- Intervenor funding for EA is needed.
- Community Groups (e.g. HTCs) have valuable advice but need technical support to frame advice to EA process.
- Communities are being "pulled inside out". They do not have enough people or funding to respond.
- There has to be a better way.

CAPACITY AND RESOURCES

Capacity and communities...

- There was a disconnect between the theory behind the *Mackenzie Valley Resource Management Act* and what is actually happening on the ground.
- MVRMA calls for recognition of traditional knowledge.
- This information should be collected and assessed by Aboriginal organizations, which requires :
  - baseline information
  - organizational capacity
  - institutional resources.
- This is a capacity issue for Aboriginal organizations.

NWT Environmental Audit (2005)

- Meaningful community participation is a foundation of the MVRMA, but continues to be a challenge
- INAC should fund an independent evaluation of the capacity of Aboriginal communities to participate in environmental and resource management processes. The findings and recommendations...should be acted on.

COORDINATION MECHANISMS: (Northern Major Project Management Office)

Some participants said...

- The existing Board Forum is useful to coordinate board efforts, training, etc.
- Some type of major projects office could be useful, if it helped coordinate government approaches.
- Any entity that would help make project reviews consistent up and down the valley would be beneficial and could increase confidence.

Other participants...

- Would like to see if and how it works in the south, before such a concept is implemented in the North, given that there are already so many existing groups and processes.
- Were cautious about such a concept (MPMO). They noted that anytime entities such as these are set up they add another hoop to jump through, more expense and can be "very difficult to kill".

QUESTIONS?

5.0 Taking a Chance on the Future

On the afternoon of March 18th, participants were assigned to four break-out groups and asked to consider specific aspects of the Northern regulatory process and mechanisms for its improvement. One break-out group (Red Group) was tasked with discussing the future of the regulatory system and the pros and cons of making fundamental changes to it. The remaining three groups were asked to consider the nature of an ideal regulatory system for the Northwest Territories and then focus upon a topic area related to it. These included coordination (including discussion of the possibility of a northern Major Projects Management Office – Blue Group), consultation (Green Group), and timelines (Yellow Group). The results of the workshops were reported back to the plenary session on the morning of March 19.

All break-out groups shared the same ground rules. The organizers of the workshop sought the groups' best advice through soliciting a range of opinions; achieving consensus was not the objective of the workshop. Any participant was free to indicate that they held a minority view on any question, and that view was recorded and noted during the report to plenary.

The following are the results of the reports of the breakout groups made to Mr. McCrank and the rest of the workshop participants. The results themselves are reproduced in slides which were shown to the plenary session, and comments and questions from the attendees are listed below following each presentation.

5.1 Red Breakout Group – Taking a Chance

Members: Bob Bailey, Glen Bishop, Patrick Borbey, Violet Camsell-Blondin, Larry Carpenter, Lou Covello, Willard Hagen, Paul Jennings, Gabrielle Mackenzie-Scott, Fred McFarland, Gordon Peeling, Bob Reid, and Elizabeth Swanson with Jim Micak and Dave Finch of Terriplan.

This group addressed two questions: (1) With respect to the northern EA and regulatory assessment system, should there be any fundamental changes made? (2) Barring major changes, what improvements could be made to improve efficiency & effectiveness? Willard Hagen reported the following results from the breakout group discussion to the plenary.

CHANGING FUTURE – WORKING GROUP

Breakout Groups
Report to Plenary Session

Breakout Group Ground Rules

We are seeking this group's best advice

- We are not seeking consensus
- Any participant can indicate that they have a minority view on any question
- That view will be recorded and noted during the report to plenary

Two questions were addressed:

1. With respect to the northern EA and regulatory assessment system, should there be any fundamental changes made?
2. Barring major changes, what improvements could be made to improve efficiency & effectiveness?

SHOULD THERE BE ANY FUNDAMENTAL CHANGES MADE?

- The group came to a general agreement that fundamental change might be desirable, but would be difficult to achieve.

- This is due in part to nature of land claim agreements.

- If possible, this change could include a fully-integrated (single) EA, regulatory, & resource management system.

- The group felt that over time the benefits of a fully-integrated single system would be realized as a result of:
  - devolution to GNWT & IPGs;
  - redefined INAC role;
  - settlement of all claims;
  - transboundary coordination; and
  - harmonization across jurisdictions

"Give the existing system a chance to grow & succeed."

- An alternate (minority) proposal was a comprehensive overhaul & redesign of the northern EA & regulatory system in consultation with the signatories to all land claims.

- **Rationale:** Improvements to the existing system have already been identified with little tangible progress.

What improvements could be made to improve efficiency & effectiveness?

1. Consider establishing a northern Major Projects Management Office
   - Repository for technical information
   - Pooling resources to support all Boards
   - Consolidate non-MVRMA regulators ("clearing house")
   - Support coordination of government involved
   - Identify creative solutions (*e.g.* Substitute Authority)

   Caution:
   - **Must not be too big or too powerful**
   - **Carefully assess organizational model (centralized, localized, network, or partnership)**

2. Timeline accountability by all parties.
   - *e.g.* EA ---- 6 months maximum

3. Rationalize decision-making
   - As decisions are made, do not revisit them; focus on what remains to be decided
   - Establish Land Use Plans to better inform industry of community preferences
     - LUPs make the process "almost too easy"
   - Establish (and share) baseline information

4. Clarity & Certainty
   - Streamline EA's to reflect complexity, size, & significance of projects
   - Government must provide definitions & clarity on consultations
   - Government must provide definitions of terms in legislation
   - Clear definitions of roles & responsibilities of **all** participants in the process

What improvements could be made to improve efficiency & effectiveness?

5. Board Appointments

   - Appointments must be made in a timely manner.

   - Options for improving or maintaining capacity of the boards...
     - Joint nominations
     - Establishing a pool of candidates
     - Longer terms for board members
     - Appointing alternate members

6. Responsive funding to meet EA & regulatory needs

   - Implementation funding is inflexible

   - Sliding scale needed that reflects workload

7. Legislative Reviews

   - Conduct review & evaluation of MVRMA
     - with industry, government, Boards.

   - Review *NWT Waters Act*

   - Address EA duplications between Yukon & ISR

In light of the discussion of fundamental changes to the regulatory and assessment system, one member of the audience reminded the attendees that the Inuvialuit Settlement Region (ISR) is significantly different from the Mackenzie Valley. For example, discussion of harmonization in the ISR has included the Canadian Environmental Assessment Act (CEAA), whereas CEAA does not apply in the Mackenzie Valley. As regards suggestions that approved land use plans should be more widespread, one member of the working group commented that approved LUPs make the regulatory process "almost too easy." Another commented that land use plans are frequently created in isolation and questioned the degree to which other groups are consulted in their drafting. Finally, discussing the topic of whether or not a northern MPMO would be necessary, one board member suggested that the Northern Gas Project Secretariat (NGPS) has been a positive and productive model, and could fulfill in part the role of an 'information repository' suggested for such a body.

5.2 Blue Breakout Group – Coordination

Members: Wanda Anderson, George Barnaby, Allan Burnside, Chuck Brumwell, Vern Christensen, Stephen Ellis, Robert Esser, Tania Gordanier, Larry Hutchinson, Robert Johnstone, Sandy Lapointe, Rick Meyers, Jennifer Morin, Alfonz Nitsiza, Randy Ottenbreit, John Smith, Kevin Smith, Bob Turner, and Mike Vaydik with Bonnie Gray Wallace and Shena Shaw of Terriplan.

This group addressed two questions posed to it by facilitators: (1) What would an ideal regulatory system for the Northwest Territories look like? (2) Would a northern MPMO help in coordinating or managing this ideal system? Chuck Brumwell (EC) reported the following results of the breakout group discussion to the plenary.

COORDINATION – WORKING GROUP

Breakout Groups
Report to Plenary Session

Breakout Group Ground Rules

We are seeking this group's best advice

- We are not seeking consensus
- Any participant can indicate that they have a minority view on any question
- That view will be recorded and noted during the report to plenary

What would the ideal regulatory system look like?

- **Simplicity**
  - One project – one assessment – one approval
- **Clear mandates, responsibilities and accountabilities**
  - Understandable and inclusive
- **Supporting 'toolbox'**
  - Regulations
  - Land use plans - "I think the best way to characterize how people's rights are laid out on the ground are land use plans,"
  - Cumulative effects management framework
  - Information sharing
- **A system that evolves by learning**
  - Audits, scheduled reviews, continuous improvements, best practices
- **Encourage voluntary initiatives to resolve issues outside the regulatory process**
- **Trust**

Would a Northern "MPMO" be helpful?

- **Needs to:**
  - Provide clear leadership or ownership of the process
  - Have authority to resolve disputes or broker solutions
  - Integrate processes that are interdependent
  - Provide a path through a convoluted system
  - Enhance the use of scarce resources
  - Extend beyond the federal government
- **A good start on "project management" initiatives**
  - some successes (e.g. MGP coordination activities; regulatory process mapping, harmonization of terms and conditions etc.)

Additional thoughts on a Northern "MPMO"

- **Continue to work on our current initiatives**
- **Don't rush ahead**
  - monitor the success of the MPMO in the coming years.
- **Whatever the recommendations are that come out of this exercise, they need an implementing body to make a difference.**

One member of the *Coordination* break out group noted that there was general agreement regarding the need for some entity to take responsibility for the regulatory process. Another observed that it would be difficult to have accountability in the absence of a focal point or one single responsible authority. One member suggested that the parties to the claims should be the managers of the system and should formalize this role by meeting regularly to address issues as they arise – small issues left unaddressed lead to huge issues that are harder to resolve. In regards to the utility of a northern MPMO, a question was raised as to what constitutes a 'major' project. One member of this group noted that the extant southern MPMO only coordinates federal departments and stated that within the group there was a feeling that for any northern equivalent, coordination would have to involve more than just federal departments. This same individual added that the ideal is to conduct only one assessment per project (noting that within the MVRMA it is possible to have more than one EA on the same component of a project) and highlighted the need for more cooperation.

One member commented to Mr. McCrank that the regulatory system as it exists is a co-management system, cautioning him to consider carefully before recommending the establishment of a northern MPMO. The member emphasised that for a northern office to truly work, it would have to consider and represent all the partners, not just federal departments. Another member of the group stated that the design of the southern MPMO seemed intended to coordinate federal and provincial involvement in large projects. He added, "This northern context seems so small to layer on this kind of management." Another member of this group commented that a single-window regulatory model might be unwieldy and better coordinating the existing regulatory system might be more feasible.

Members: Robert Alexie, Jann Atkinson, Collin Bayha, Walter Bayha, Lynn Bernard, Rosy Bjornson, Paul Boucher, James Caesar, Jason Charlwood, Ed DeBruyn, Doug Doan, Edward Drybones, Paulo Flieg, Mike Hardin, Helga Harlander, Tim Heron, Marc Lange, Melody Nice-Paul, Annette Nita, John Stevenson, Freda Taniton, Norm Snowshoe, and Ron Wallace with Constance Ramaciere and Amee Pond of Terriplan.

This group also addressed two questions: (1) What would an ideal regulatory system for the Northwest Territories look like? As a second question the green group was asked (2) Can the Northern Regulatory Improvement Initiative address some of the concerns around the consultation process? Mike Hardin (PDAC) reported the following results of the breakout group discussion back to the plenary.

Breakout Groups
Report to Plenary Session

We are seeking this group's best advice

- We are not seeking consensus
- Any participant can indicate that they have a minority view on any question
- That view will be recorded and noted during the report to plenary

What would the ideal regulatory system look like?

- A single system that protects the environment and includes social, economic, cultural factors
- Respect for Aboriginal and Treaty rights
- Building relationships between communities and industry
- Building collective trust and capacity
  - building capacity within all constituencies
- Complete implementation of the *Mackenzie Valley Resource Management Act* (land use plans)
- Develop a common vision and common goals for all regulatory boards and agencies
- Regulatory reform and settlement of land claims must proceed concurrently
- Mechanisms needed for projects that cross jurisdictional boundaries (decision matrix)
  - integrate conflict prevention

Did the NWT Address Some of the Concerns Around the Consultation Process?

Consultation

- Crown should develop written consultation protocols with First Nations
- Protocols should have a duration of three to five years in order to respond to changes in the law
- The *Mackenzie Valley Resource Management* designed to protect the environment; not intended to satisfy the Crown`s duty to consult and to accommodate
- Establish a coordinated ("one window") approach to consultation for federal departments and agencies
- Any requirement for consultation must be addressed at the beginning of the process
- The Crown can satisfy its duty to consult in a number of different ways: *Taku Tlingit and Paramount Resources*

Consultation

- The MVRMA Boards need to develop their own protocols for the consultation that they must conduct
- The Crown cannot delegate its constitutional duty to consult to the MVRMA Boards: government departments and agencies must fulfill this obligation themselves.
- In determining when and how deeply to consult, the Crown should err on the side of caution *(honour of the Crown)*.
- Education is essential to equip First Nations to fully protect their Treaty rights and interests.

One participant noted that a number of provincial governments had produced written guides on how to engage in adequate consultation. His personal experience was that there is a need for clarity on the duty of the government to engage in consultation and the terms of that duty. He suggested drafting a document that was legally correct and had a plain-language summary, which would be followed up by an educational process involving governments and First Nations organizations.

Another participant also commented that there should be greater education regarding the regulatory process, noting that under the current system there are no formal requirements for assessing cultural and social impacts. These are instead left to the communities, and without a specific mechanism to address them it was felt that matters were pushed to the EA process. Another participant emphasized the matter of dispute prevention, stating that if potential problems were anticipated and dealt with, then they would not have to be mediated and settled at the end. Referring to this as 'punting away' problems, he compared the process to playing football with seventeen players.

One participant pointed to provisions in the Gwich'in Land Claim Agreement that could be used as a starting point to expand or clarify the consultation protocol. Another offered the Akaitcho interim measures agreement, putting it forward as a model for consultation. Another participant stated that the EA process was one of the few opportunities for elders and land users to be heard regarding treaty rights and that the EA process is often seen as a demonstration of how the process is really working. One participant's expressed hope that any recommendations to come out of this process would be respected and implemented. Another participant stated that communities should have the final say for determining if they have been consulted, and added that "everyone agrees with consultation but it should be step-by-step and more clear."

Members: Philip Bousquet, James Boraski, Carl Chala, Gordon Erlandson, John Donihee, Ginny Flood, James Fulford, Tim Goos, George Govier, Susan Mackenzie, John Masterson, John McCullum, Bill Megill, Zabey Nevitt and Zoe Raemer with Ricki Hurst and Nathan Towsley of Terriplan.

This two questions addressed by this group were: (1) What would an ideal regulatory system for the Northwest Territories look like? And (2) What are the key issues and potential solutions around timelines, including predictability and accountability? Tim Goos (EC) reported the following results of the breakout group discussion to the plenary.

Breakout Groups
Report to Plenary Session

We are seeking this group's best advice

- We are not seeking consensus
- Any participant can indicate that they have a minority view on any question
- That view will be recorded and noted during the report to plenary

- **Having all the Pieces in Place**
  - All Land Claims would be settled.
  - Boards would be established with a full slate of appointees.
  - Proponents, Boards and the Public would understand the system and know who to talk to.
  - There would be a clear understanding of Roles and Responsibilities.
  - There would be Clear Accountability.

- **Defining the Hard Limits**
  - Land Claims are enshrined in the Constitution and we cannot change the regulatory system without respecting this.
  - The spirit and intent of Land Claims is to have Regional bodies; and they are probably here to stay.

- **Having the means of 'closure' for certainty** [mechanisms to complete each stage of regulatory process]
  - Establish Surface Rights Board with adjudication powers/
  - One project – One EA [fewer 'on ramps' to EA].
  - Establish Process for finalizing land access agreements.

- **Consultation**
  - The extent of consultation would be scaled depending on the type of activity and potential impact.
  - Consultation analysis is going on simultaneously with review of permit proposal (in ideal regulatory system, consultation would have: guidelines, process, protocol).

- **First, make what you have work well**
  - Some of the MVRMA has not been implemented.
  - Sort out implementation issues [and prioritize them].
    Clearly define 'public concern' under the MVRMA
    [as well as other definitions].
- **Create a Risk-Management System**
  - there may be creative ways of doing this...
- **Boards could function better** with an adequate budget and increased capacity.
- **Finalize and Approve Land Use Plans**
- **Existing timelines would be respected** [e.g. 42 day limit on Land Use permits].

What are the key issues and potential solutions around timelines; including predictability and accountability?

- **Explore timelines**
  - a comprehensive review of existing processes and their timelines.

- **Licensing Issues**
  - Deal with licensing in a fashion that works to satisfy the needs of the Boards, the community, and the proponents.
  - Tailor timelines to users needs (e.g. sensitive to seasonality issues such as need for ice roads, and proponent business schedule).
  - Timelines are very difficult to predict when several regulatory processes follow one another.
- **Proactive management of future EA timelines**
  - Provide stable funding for and use CIMP to improve baseline info.
  - implement recommendations of NWT Environmental Audit.

- **There are Intrinsic linkages between Land Use Permits and Water Licenses**
  - Can each be tied onto the same timeline?
  - Can we align permitting timeframes.

- **Anticipate infrastructure and expertise support**
  - use outside technical expertise to inform reviews (e.g. water license) in order to move it along faster.
  - use expertise from Federal government or provisions from Feds. [INAC] to contract outside technical experts.
  - establish 'independent' fund to contract experts [maintain a stable of experts].
  - Sponsor technical workshops on relevant themes.

- **No time limits exist on Environmental Assessments.**
  - There is not necessarily one project – one ea.
  - Aboriginal Groups and communities can order an EA, even after a proponent has been granted a land use permit, and project work has begun.

Relatively few comments were made as regards this report. A member of the group noted that the report to the plenary was quite comprehensive and clarified that not all points raised were consensus, the matter of tailoring timelines to specific proponent and seasonal needs being an example.

Mr. Neil McCrank took the microphone and encouraged attendants to make one recommendation directly to him. He suggested that there was no need to repeat earlier advice, but also stated that if there was something that anyone wished to repeat for emphasis or clarity they should feel free to do so.

Robert Esser (NTI) suggested that we should give the boards the tools to do their job by, for example, implementing the legislation and providing adequate funding. When asked by Mr. McCrank if he was including in his suggestion a definition of their respective roles and responsibilities, Mr. Esser agreed that this would go a long way towards clarifying ambiguities. **Mr. McCrank** referenced his recent work with the Board Governance Task Force in Alberta and said that the Government of Alberta didn't even know how many boards there were (their estimate was 100 fewer than actually existed as determined by Mr. McCrank).

Chuck Brumwell (Environment Canada) emphasized the importance of implementing the recommendations from this work. "You have been given the assignment and you will have to light the fire to actually make it happen." **Mr. McCrank** agreed that a very important part of his report will be to recommend an implementation plan for his recommendations.

Vern Christensen (MVEIRB) expressed his hope that Mr. McCrank would consider carefully the length of the EA process, and how only a portion of that time is under the control of the Review Board. He expressed more concern about the 'back end' of the process; i.e. post-MVEIRB recommendation. Mr. Christensen expressed his feeling that there must be a big capacity problem within INAC given the problems with timely appointments, Section 35 consultation, and the apparent departmental inability to address social-cultural concerns. **Mr. McCrank** assured Mr. Christensen that he sees this as a continuum of events, wherein everyone shares the blame.

Norm Snowshoe (Gwich'in Tribal Council) noted that the 2003 OAG report on the Gwich'in Land Claim Agreement Implementation highlighted capacity issues. The 2005 NWT Environmental Audit also noted a gap in capacity for implementation. He expressed hope that the McCrank report will recommend capacity development especially in communities, and that the current implementation funding is not a solution to capacity. **Mr. McCrank** agreed that there are capacity issues on all fronts, but he also stated his belief that the capacity issue won't be solved in the present way – i.e. by involving everybody in all steps of the process. He stated that one of his conclusions is that we simply can't have all parties become experts in all areas, and that the capacity issue may be more than simply adding funding or bodies. Mr. McCrank then quoted Willard Hagen that, 'we have to be bold and take no prisoners.' Mr. Snowshoe offered that there may be a way of identifying one person from each community or one from each region to help with the regulatory process.

Tim Goos (Environment Canada) referred back to the comment of Paul Boucher suggesting conflict avoidance rather than conflict resolution. He also noted Willard Hagen's comment that with an approved Land Use Plan for the Gwich'in region, the regulatory process is almost too easy. He supported the approach 'to do it right once' either through a land use plan or a regional environmental assessment.

Willard Hagen (Chair MVLWB and Gwich'in LWB) made a point from the Mackenzie Valley Land and Water Board perspective that we haven't been sitting back and waiting for a report to come out showing us our strengths or our weaknesses. We've initiated, in partnership a few months ago with all the regional boards, an initiative to develop consistent policies, procedures and practices on how we do our business through the whole Mackenzie Valley. That is still ongoing. All of our staff and Executive Directors are involved, and we're focusing on six areas: application review processes, terms and conditions, planned guidelines, data management, water quality guidelines, and public engagement. It's been ongoing for a couple of months, and we hope to produce products that will be made available to a larger group to review and comment on in the next six months, at the very outside, a year. The goal is to provide certainty again for all our clients - industry, First Nations, communities, and all stakeholders and participants - involved in our processes. We have been working on this, and we'll continue to work on it to improve what is happening in the Valley. A lot of times also - and I don't carry the banner for INAC because they can do that well for themselves - not enough credit is given to INAC. We work very hard and very well with INAC, and we really rely on their decades of experience in the North and in particular in the regulatory field. The boards today are where we are largely because of the mentoring from INAC and their people. Some of our hardest working board members and directors are long-term northerners who have retired from a 20-30 year career with INAC. We again rely on their expertise for decisions, the kind of tough decisions that they've made a career of. I just think there's not enough accolades been given to INAC in the North. Thank you. **Neil McCrank** supported this, suggesting that the north is lucky to have such committed civil servants in INAC doing a very tough job.

James Boraski (MVLWB) noted that there has been a lot of very good dialogue at this workshop and that he would like to encourage Mr. McCrank to accentuate the positive. Like any change, this can and should be viewed in a positive light. He suggested framing change in a way such that it doesn't suggest the present process, or the people implementing that process, are wrong. Mr. Boraski suggested that we exhibit the courage required to take small steps, incremental and together make some distance...start short term and lead to long term change. Regulatory change is hard work – but the fact that it is time consuming and difficult does not mean that it is the wrong thing to do. **Neil McCrank** agreed and said that, 'if you want a regulatory system to work as well as it can, it has to come out of this group, these people here in the room today.' He suggested that if we want a regulatory system that is balanced, efficient and allows development to occur, then we need to figure out how to get from A to Z. Mr. McCrank cautioned attendants that they should not expect anything new or

particularly creative in his report to the Minister, because you in this room are the brain trust for the NWT.'

Paul Boucher (Akaitcho First Nation) emphasized to Mr. McCrank that the Akaitcho are not in an unsettled area; rather 'we have a treaty that's been in existence since 1900'. He noted outstanding treaty issues like resources and lands. For us to move forward, we need to recognize the treaty relationship of the Crown and build upon it, not tear it down. Mr. Boucher said, 'we want to benefit from resources extracted from our territory; we don't want things like the MVRMA imposed.' We need to respect the principles of the laws of the Dene and work in parallel with those. He challenged any use of the word integrated, stating that one can not integrate differing values. 'We have to walk together, not one behind the other. We have to walk together but also respect the Dene law.' He concluded by saying, 'we don't want to fall under other people's laws. We are a government and we have a treaty that has to be respected.' **Mr. McCrank** confirmed that he has the message of respect and trust for one another clearly in his head.

Gabrielle Mackenzie-Scott (Chair, MVEIRB) expressed some disappointment that there were not a whole lot of aboriginal people here, especially from the communities. She asked, 'where are the parents that agreed to have kids like us, kids of the land claims?' Ms. Mackenzie-Scott told Mr. McCrank that she doesn't want EA to be the scapegoat in this report. She said she was heartened by Rosie's words earlier (that community people who have a say at MVEIRB hearings are beginning to say that it is finally working. She asked Mr. McCrank to 'let us have time to grow and leave the Act alone.' **Neil McCrank** agreed that he too is disappointed with the few Aboriginal people here today, but that we did try hard but weren't successful in connecting with them. He noted again his belief that the regulatory issue is actually a continuum of issues, and that no one part of the system should become the scapegoat.

Vern Christensen (MVEIRB) suggested, 'a management approach which engenders trust and cooperation among all of the partners to the MVRMA.' He expressed his wish that Mr. McCrank recommend some formalized management structure to alleviate trust issues as to who makes recommendations for change (again, a conflict prevention mechanism). He stated his belief that a different approach is needed; that annually the boards meet with partners to the MVRMA to discuss how things are working; that this must be transparent and not the current political system. **Mr. McCrank** thanked Mr. Christensen for his suggestion particularly as we have them all in one room today.

Fred McFarland (Chair, EISC) asked Mr. McCrank 'not to forget the ISR'. He noted that there are some similar issues between the ISR and the valley, such as the compelling need for information to permit timely decisions. He noted, for example, the failure of government to keep up the momentum in the 1980s and 1990s when the oil and gas industry left the Beaufort Region. In terms of differences, he noted the marine component in the ISR where issues differ from other areas of the NWT. Mr. McFarland cautioned Mr. McCrank to remember

that this is a co-management regime; unique, protected; and created from the bottom up. He listed some other things to remember: that part of the difficulty with capacity is in the pace of development. **Neil McCrank** responded that he will address the issue of capacity due to increased development.

Patrick Borbey (ADM, INAC) acknowledged INAC's share of problems and solutions. He agreed that, 'we have a complex business to run, and I can stand to learn from others.' He stated that, 'I am very much aware that the role of INAC has to change;' that it has to change through devolution, and that it has to change through empowering local people. He noted that this, as well as the strong attention on Canada's north, reflects the sentiment in the Northern Strategy and that being expressed by the Prime Minister. He noted that the present system reflects more than land claim agreements, but also a long history including redressing mistakes of the past such as Giant Mine and other abandoned sites. He said that he would support the previous comment that there are some gaps in the northern regulatory system, specifically in the NWT that need addressing (e.g. surface rights board, MVRMA amendments). **Neil McCrank** thanked Mr. Borbey for his comments and also for the excellent support he had received from INAC staff, including Steve Traynor, Alison Lobsinger and others.

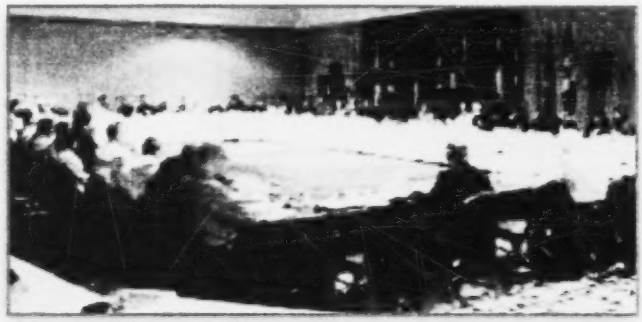


Photo Credit: Gilles Binda, INAC

Figure 3. Katimavik Room

George Barnaby (Sahtu LWB) noted that the process in place now is based on community control, and we should always keep that as the main thing. All of the Boards work for their region, and Boards reflect local knowledge. Mr. Barnaby argued against centralization saying, 'there is nothing but trouble there.' He suggested that Boards get together and look at issues outside the implementation of their own claim. **Mr. McCrank** thanked Mr. Barnaby, acknowledging his suggestion for inter-board dialogue.

Bob Bailey (Deputy Minister of ENR-GNWT) who was retiring the next day, after a 34-year career with government in the NWT) started by noting that, 'the system is there and it is working'. We need to look to the future. He acknowledged the earlier GNWT commitment to provide Neil McCrank with written comments and noted that they will follow soon. He echoed the comments of Patrick Borbey with respect to the importance of partnerships, including those between INAC and GNWT and with the City Council. He noted the recent alliance between the City and GNWT to request that the Giant Mine remediation go to the EA process. Mr. Bailey concluded by saying that there are always ways to worked together. **Mr. McCrank** thanked Mr. Bailey and congratulated him on his long and illustrious career and his imminent retirement.

7.0 Closing Remarks

Ricki Hurst made some closing remarks on administrative matters, informing participants that Terriplan will send out copies of the five presentations used at this workshop including 'What Mr. McCrank Heard' as presented by Ricki, and the four Breakout Group presentations reported in the morning plenary session. He also reinforced the commitment that Terriplan would send a copy of a draft Workshop Summary Report to all participants on March 31; that attendants would be asked for any review comments by April 4, and that Terriplan would finalize the report by April 7, 2008.

Neil McCrank gave kudos to the Terriplan team, including the facilitators and recorders, and for all of the work undertaken in preparation for the workshop. Following his recounting of an old family story, Mr. McCrank pursued the metaphor by describing his role from here on as, 'to take this, on your behalf, through all of the bottles...to avoid any potential conflict that may occur on the way to get from here to where you have to go.' Mr. McCrank closed the workshop by reminding attendants that, 'I am not just the Minister's representative, but I am also your representative to the Minister.'

APPENDIX I

ASSESSMENT OF THE CURRENT REGULATORY SYSTEM

Objectives of Model System	Current System
1. Understandable	X
2. Neutral	?
3. Clear Mandate	?
4. Open and Transparent Process	✔
5. Fair Process	✔
6. Timelines	?
7. Consistent and Predictable	?
8. Accountable	?
9. Capacity	X
10. Coordinated	?
11. Established Rules	?

Legend:

✔ Objectives met in the current regulatory system

? Objectives not met (consistently) in the current regulatory system

X Objectives that cannot be met in the current regulatory system

APPENDIX J
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